UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 17 CR 630-1 (ER)

Oral Argument

MARK SCOTT,

Defendant.

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New York, N.Y.
April 25, 2022
2:05 p.m.

Before:

HON. EDGARDO RAMOS,

District Judge

APPEARANCES

DAMIAN WILLIAMS,
United States Attorney for the
Southern District of New York
BY: CHRISTOPHER DiMASE
NICHOLAS FOLLY
MICHAEL McGINNIS
JULIANA NEWCOMB MURRAY
Assistant United States Attorney

COVINGTON & BURLING, LLP
Attorneys for Defendant
BY: ARLO DEVLIN-BROWN
KATRI A. STANLEY
-and-
DAVID M. GARVIN, P.A.
BY: DAVID M. GARVIN

(In open court)

(Case called)

MR. FOLLY: Good afternoon, your Honor. Nicholas Folly, Christopher DiMase, Michael McGinnis and Juliana Murray on behalf of the government.

MR. DEVLIN-BROWN: Good afternoon, your Honor, Arlo Devlin-Brown, David Garvin and Katri Stanley for Mr. Scott, who's seated to my left.

THE COURT: Good afternoon to you all. So how have you been?

There is a lot to cover. There are at least, I guess, roughly speaking, two motions pending before the Court. One motion pursuant to rules 29 and 33 of the Federal Rules of Criminal Procedure, based, in the first instance, on the insufficiency of the evidence at trial, the impropriety of at least one jury instruction, and that motion was later supplemented, triggered by a number of incidents. One, the revelation that one of the government's cooperators testified falsely at trial concerning testimony that he gave concerning the disposal of a particular laptop, and another couple of issues that have subsequently been expounded upon, including testimony that he gave that is allegedly also perjurious concerning the presence, or not, of a particular co-conspirator at a meeting at which Mr. Scott was present in 2016, and the use of a telephone while incarcerated, and I forget whether it

was MCC or MDC.

And another set of motions concern the forfeiture in this case.

And so who wants to begin? Mr. Devlin-Brown?

MR. DEVLIN-BROWN: Certainly, your Honor.

THE COURT: You can remain seated, and you can stay seated. Just bring the microphone as close to you as you can.

MR. DEVLIN-BROWN: Certainly, your Honor. So with respect to the pending motions, does your Honor have any preference into which order we take the motions?

And I should say, the forfeiture issues we're happy to address questions today. We hadn't thought that was the focus, as we'd only get to those issues if there was a sentencing but --

THE COURT: That's absolutely -- at least in my mind, that's exactly correct. We can deal with the rule 33 and rule 29 motions.

MR. DEVLIN-BROWN: Does your Honor have a preference with respect to the order?

THE COURT: I don't, although it makes sense to talk a little bit about the sufficiency motion first because that can trigger a conversation about the other issues.

MR. DEVLIN-BROWN: Certainly, and Ms. Stanley will address that.

THE COURT: Absolutely.

MS. STANLEY: As your Honor recalls, Mr. Scott filed original post-trial motions in this matter on both rule 29 and 33 arguing for acquittal or, in the alternative, for a new trial. We want to turn to the principal arguments made in those motions. First, that there was insufficient evidence to sustain a conviction against Mr. Scott on conspiracy to commit bank fraud; and second, that there was an insufficient nexus to the United States to render this a permissible domestic application of the wire fraud statute, the specified unlawful activity underlying the money laundering and conspiracy charge.

So let's look at the bank fraud.

THE COURT: Ms. Stanley, before you get going, I just want to make sure that I'm clear that no part of your motion is premised on the thought that the OneCoin venture was legal, or so far as Mr. Scott knew was legal, or maybe those are two different things.

MS. STANLEY: I think those are two different things. Certainly with respect to the money laundering charge, we do argue in our motions and plan to argue today that there was not a sufficient nexus to the United States for the underlying wire fraud activity.

THE COURT: Okay.

MS. STANLEY: First, with respect to the bank fraud charge, when Mr. Scott was arrested in September 2018, he was charged with one count of conspiracy to commit money

laundering, and only a month before trial, the government added a second count, conspiracy to commit bank fraud.

In response to a defense, counsel requests for the particulars of the financial institutions against which Mr. Scott had allegedly conspired to defraud under 18, U.S.C. 1344, the government identified three sets of transactions. Two of the three we can group together as the Armenta transfers, which involved actions taken by Gilbert Armenta's defense funds of his own accounts at Morgan Stanley into Mr. Scott's Fenero Fund. The other pertained to a $30 million loan from the Fenero Fund to an entity called CryptoReal.

In both instances, the government alleged that the transaction descriptions provided to effectuate the transfers were fraudulent. We'd like to look at each of these sets of transactions in turn to show why none constitute bank fraud or even an attempt at bank fraud under the statute.

The Armenta transfers. The government introduced evidence showing that Mr. Armenta disguised the purpose and nature of the transfers from his own accounts at Morgan Stanley and Sabadell Bank into the Fenero Fund run by Mr. Scott in June and September 2016. But as a threshold matter, Mr. Armenta's own actions do not constitute bank fraud.

Simply put, Mr. Scott is not aware of any conviction for bank fraud involving an individual who provided an inaccurate statement to his or her own bank in connection with

the transfer of that person's funds. And the government cites no case law to the contrary.

If we contrast this instance with the Second Circuit case *Lebedev* in 2019, where the Second Circuit upheld the bank fraud conviction of the defendant who provided false information to financial institutions to induce them to process customers' transactions and to obtain the funds in third-party customer accounts.

What we have here is the opposite. Mr. Armenta was transferring his own money, and his transfers are more akin to those in *Perez-Ceballos*, a Fifth Circuit case in which the court held that the defendant's efforts to effectuate transfers between her own accounts did not constitute bank fraud.

Second, separate from the question of whether Armenta's own actions constitute bank fraud, those actions certainly do not touch on any criminal activity on the part of Mr. Scott. Mr. Scott never had any contact with Sabadell or Morgan Stanley, and so any bank fraud conspiracy theory on the part of the government necessarily hinges on Mr. Scott's having colluded with Mr. Armenta on what to tell the banks. But there was no evidence whatsoever that Mr. Scott had told Mr. Armenta what to put or say, that they had, in any way, discussed it or that Mr. Scott would necessarily know that Mr. Armenta would have to lie to make the transfers, no e-mails, no purported conversations on this topic, nothing in Mr. Armenta's 3500

materials, nothing.

In fact, the government did not even allege that Mr. Scott and Armenta had engaged in such discussions, and its statements here are conclusory. For example, in the closing, the government stated that: Of course, Mr. Scott knew that Mr. Armenta was going to lie to the banks; or in its opposition, the government said that Mr. Scott understood that Armenta would need to tell lies such as these United States banks. In other words, these statements by the government presuppose the very thing that the government says they have proved. Furthermore, they're not true.

THE COURT: Why is it conclusionary if the government's arguments are based on the totality of the evidence that was presented at trial? Which is to say that the Fenero funds were not truly investment funds, but they're shell corporations that were created by Mr. Scott for the purpose of laundering OneCoin's money and that Mr. Scott was well aware that Mr. Armenta was working hand in glove with Ms. Ignatova and was, I believe, her primary money launderer?

So if all of that is true, and Mr. Scott was aware that the funds that Mr. Armenta was going to be using and referred to them as his funds, but if the government is saying based on everything that's before you, the jury, you know that these funds are the proceeds of the OneCoin scheme, why is the government's argument conclusionary?

MS. STANLEY: Well, with respect to these specific transfers, there was never any evidence of discussions that the money in these accounts was necessarily the origins -- where the origins of the money in these accounts necessarily came from. But furthermore, it's just not the case that Mr. Armenta would have had to lie to effectuate these transfers to get them through, nor would Mr. Scott have understood that he had to lie.

So by the government simply saying that, you know, this is Mr. Scott's understanding because they were part of the conspiracy, that simply just was not true because Mr. Armenta could have told the truth, that these were transfers he was making to BVI registered private equity funds, as the Fenero funds were.

So the idea that there exists a collusion or conspiracy between Mr. Scott with respect to effectuating these specific transfers from his accounts into the Fenero funds, it just isn't there.

And, furthermore, you know, there is a real sort of danger in conflating money laundering with bank fraud here, sort of in response to your Honor's question, because the specific information or misrepresentations that were told to the banks, that's not bank fraud conspiracy for which Mr. Scott should have been convicted because the evidence simply just wasn't there.

THE COURT: I take your point about conflating the two offenses, and that's absolutely fair. But wasn't there testimony in evidence concerning the fact that banks and other financial institutions wanted nothing to do with OneCoin?

And again, I forget exactly how Mr. Armenta fit into all of this, but my understanding is that he was affiliated or connected with the OneCoin scheme. And if he were to tell the truth and say, look, this is my money that I'm transferring, wouldn't that have triggered some knowledge on the part of the banks, well, this is obviously related to OneCoin and we want nothing to do with it?

MS. STANLEY: I think, with respect to this specific point, that's why something we'll later come to is so important, is that while there was testimony, as your Honor described, that there were banks that did not want to deal with OneCoin, and OneCoin had difficulty banking with certain banks, the bank fraud charge is very specific as to meeting FDIC insured banks have been defrauded or the object of the scheme to defraud.

And so when the government put forth evidence as to what a series of bank frauds were, it didn't pertain to banks generally throughout the world that had apprehension, hesitation about dealing with OneCoin or Ms. Ignatova's money, it was specific as to these three FDIC insured institutions that were defrauded, and that was the only evidence put on at

trial of possible banks that could have fit under the statute to meet the definition of what the statute calls for with respect to bank fraud.

And we can come to this later, but the point that your Honor raises is likely one that the jury found confusion on, as well, precisely because there was so much evidence during this trial about many banks throughout the world. Apex, which is not an FDIC-insured institution, a separate fund administrator with which Mr. Scott dealt, there was likely to be confusion with respect to what specifically the charge was getting at.

So if I could just finish on the Armenta transfers, just to make a brief point.

THE COURT: Yes.

MS. STANLEY: You know, contrary to this idea that Mr. Armenta and Mr. Scott were in cahoots together to conspire to commit a federal crime, quite on the contrary. There was ample trial evidence that Mr. Armenta lied repeatedly to Mr. Scott about the investments that he was making into the Fenero, and the accounts purportedly involved in those transfers.

He sent forged documents from the banks that had the transfers, claiming that he had certain accounts there that didn't actually exist. He sent fake wire instructions. So these are not activities of people who are conspiring together to achieve a criminal purpose.

So the second aspect of the bank fraud charge pertains, as I mentioned, to this investment in CryptoReal, which was a $30 million transfer that Mr. Scott directed Apex to facilitate from a Euro-denominated account at DMS Bank in the Cayman Islands, to a bank in Hong Kong. And DMS cleared those through an intermediary bank, Bank of New York Mellon.

The government contends that the description that Mr. Scott provided for this transaction, loan to CryptoReal Investment Trust DBI Martin Breidenbach for acquisition of Madagascar oil field --

THE COURT: I'm sorry, Ms. Stanley, can I ask you to slow down just a little bit.

MS. STANLEY: Sure, yes.

-- was false. As an initial problem with the government's theory here, there is no evidence that the description of the transaction that Mr. Scott provided to Apex was fraudulent. The government repeatedly saying that this deal was fake does not make it so. It put on no evidence that the deal did not go through as planned and, in fact, the government's evidence showed that there was an oil field for purchase.

In fact, this follows a troubling pattern of the government using the word "fake" to describe all aspects of Mr. Scott's business dealings, using it 43 times in opening summation and rebuttal. But on the contrary, Mr. Scott was

provided documentation showing that this was a real deal, and took comfort from his knowledge of the involvement of the Neil Bush, who Mr. Scott was not permitted to call at trial as a witness.

However, even if the descriptions were not accurate, as the government contends, Mr. Scott played no role in providing that description to an FDIC insured institution. There was no evidence that Mr. Scott knew that this transaction between two non-U.S. banks would be processed through a U.S. intermediary. Mr. Scott gave Apex the information and provided no detail or further instruction about how that loan would be processed.

So to come back to the point that I had started to make before with respect to the Armenta transfers, the Court's decision not to provide a limiting instruction, despite Mr. Scott's request to state to the jury that the bank fraud charge was confined to three banks on which evidence was presented at trial, Morgan Stanley, Bank of New York Mellon and Sabadell Bank, led to almost certain confusion on the part of the jury. This further necessitates a judgment of acquittal or, in the alternative, a new trial.

At numerous points throughout trial and in its briefing, the government spoke about Mr. Scott's and his co-conspirators' intention to deceive banks around the world and spoke of all the lies that he told to financial

institutions in running the Fenero Fund, but it is only bank fraud if it is an FDIC insured institution that was the object of the scheme, a point on which the jury was likely confused.

A limiting instruction, such as the one Mr. Scott proposed, would have avoided this confusion, but because one was not provided, the Court cannot have confidence that the jury's verdict was based on the evidence of bank fraud as presented at trial.

Further, the only witness from a financial institution to have actually met or even interacted with Mr. Scott, Paul Spendiff at Apex, was not actually from an FDIC insured institution, and yet, the government, in its opposition, focuses much of its response on alleged lies that Mr. Scott told to Apex. Again, this does not meet the statutory definition of bank fraud.

Finally, without a limiting instruction, the jury likely conflated the bank fraud charge with the money laundering charge and, thus, there is a substantial likelihood that the defendant may have been convicted of an offense other than the one charged.

Now, if you'd like, I --

THE COURT: On the issue of Mr. Armenta lying to Mr. Scott, as I recall, there was evidence presented at trial -- and I guess I'm asking you to help me put this in some sort of chronological order. There was evidence presented at

trial that the folks running OneCoin were, at least once upon a time, concerned that Mr. Scott was -- I believe the phrase was -- a highly placed government informant.

Can you place in order for me when it was that these purported lies were told to Mr. Scott by Mr. Armenta?

MS. STANLEY: As is my recollection, those conversations, which Mr. Armenta was not involved, as I think you're referring to conversations between Irina Dilkinska and Frank Schneider, came well after the lies that Mr. Armenta told to Mr. Scott, which occurred around the same time that these transfers were made.

THE COURT: Okay.

MS. STANLEY: We turn now to the other principal argument in our original post-trial motion that pertains to the money laundering conspiracy charge against Mr. Scott.

Specifically there was an insufficient nexus to the United States to render this a domestic application of the wire fraud statute. Under U.S.C. -- 18 U.S.C. 1956, the laundered funds need to have been proceeds of the specified unlawful activity, which the government expressly charged as wire fraud.

Simply put, Supreme Court case law is clear that there is no permissible extra-territorial application of the wire fraud statute, and the government agreed. Of course, this is not true of every statute, and had Congress wanted the wire fraud statute to cover extra-territorial conduct, it could have

drafted it as such, but it did not.

Because of the absence of clear indications that the wire fraud statute applies extra-territorially, the statute requires conduct core to the statute's focus to be tied to the United States. In this instance, however, the OneCoin scheme had an insufficient nexus to the United States to meet this jurisdictional threshold.

The entirety of the government's evidence tieing OneCoin to the U.S. came from two witnesses, Linda Cohen and William Horn, who testified that they invested a combined total of approximately $54,000 in OneCoin. This is a tiny, minuscule fraction of what the government says OneCoin took in globally.

THE COURT: Is there a de minimus aspect to the money laundering statute? In other words, if it's sufficiently small, it doesn't count as money laundering?

MS. STANLEY: The case law isn't clear as to if there's a certain percentage required or doesn't specify as to what the extent of the activity has to be.

MR. DEVLIN-BROWN: At the risk of undermining the great job my colleague is doing, as to your Honor's question was the money laundering statute, and our argument here is not about whether the money laundering statute has extra-territorial reach. It clearly does, but it has to be proceeds of a specified unlawful activity. Here, the government said wire fraud. Wire fraud doesn't have

extra-territorial reach. With wire fraud, there has to be sufficient U.S. conduct. So that's the argument.

THE COURT: Got it.

MS. STANLEY: And as to whether there is a -- in the wire fraud -- thank you for that important clarification. Because as to whether there is sufficient guidance in the wire fraud case law, to specifically pinpoint what the threshold is of U.S. activity to render a domestic application, there isn't, which is why when you look at the facts here of the evidence that was presented at trial, those facts become so important.

There was no evidence of other purchasers from the United States, apart from Linda Cohen and William Horn. There was no evidence presented to the jury of other purchases, no evidence of U.S. employees of OneCoin, no evidence of U.S. offices of OneCoin. Therefore, the contacts with the United States that the OneCoin wire fraud scheme was alleged to have had is simply insufficient to render this a domestic wire fraud scheme.

THE COURT: Perhaps I wasn't clear. Let me ask the question this way. If only $54,000 of the $400 million fraud occurred in the U.S., are you arguing that that is not a sufficient hook to bring the case within the jurisdiction of the U.S. courts?

MS. STANLEY: Yeah, we are certainly arguing that this minimal amount of activity is an insufficient -- is an

insufficient jurisdictional hook, as your Honor has said, and in particular, when we analogize -- because there is no clear guidance as to what is sufficient.

To answer your Honor's question, in the absence of clear guidelines when we analogize to other case law, for example, the facts here demonstrates that their investments and any possible activity in the United States that OneCoin operated, was far too trivial to be integral to the scheme to defraud.

THE COURT: Also, wasn't there testimony by either one or the other that not only did they invest but that they were cajoled, I guess, into investing by family members and that they, in turn, asked others to invest, et cetera?

MS. STANLEY: There was testimony with respect to Ms. Cohen, who said that she had been influenced to invest by her son, who encouraged her to invest. And Mr. Horn said that he had invested at the persistence of an acquaintance, but there is no evidence as to any directive directing activity in the United States by OneCoin that induced either of the two to invest.

And further, when we analyze the U.S. contacts of OneCoin in this case to other cases at issue, for example, the Second Circuit *Petroleos Mexicanos*, that was a case in which the Second Circuit rejected application of the wire fraud statute to --

THE COURT REPORTER: I'm sorry. Ms. Stanley, you are going to have to slow down, please.

MS. STANLEY: All right. Even though the defendants obtained over a $159 million of financing in the U.S. transmitted seven false invoices for over 129 million through New York and made payments to a trust in New York. So --

THE COURT: I'm sorry, and the name of that case was *Petroleos Mexicanos*?

MS. STANLEY: That's correct, yes.

The government can't escape its own evidence, as presented at trial, that OneCoin was created by people outside of the U.S., primarily marketed to and invested in by people outside the U.S. and simply has not proved the existence of a domestic wire fraud scheme.

Lastly, we'd like to touch on the argument that there was no evidence showing that funds from the domestic wire fraud scheme ended up in the Fenero Fund. As noted, the only U.S. investments from Horn and Cohen, those were the only U.S. investments into OneCoin on which there was evidence at trial, and there was no evidence whatsoever that those proceeds ended up in the Fenero Fund.

With respect to Mr. Horn, the government doesn't even try to make that argument. With respect to Ms. Cohen, you know, its own financial-tracing expert testified, Ms. Rosalind October, admitted that she didn't have all of the records

underlying the accounts that sent money to the Fenero Fund, and the government further confirmed this by a letter in response to defense counsel's request.

And so there's simply not even a plausible tracing analysis, but there was no tracing analysis put forth whatsoever that would show that any of those monies from a U.S. wire fraud scheme ended up into the Fenero Fund. And we further detail this in the Gannaway declaration that accompanied Mr. Scott's December 2020 forfeiture briefing.

THE COURT: So even if I were to find that the $54,000 out of the 400 million that two U.S. citizens were defrauded here in the U.S., I should still find that Mr. Scott did not violate the money laundering statute because none of those $54,000 passed through Fenero?

MS. STANLEY: We would principally argue that the main basis on which your Honor should rule with respect to this point really centers around the insufficient nexus to the United States, but we also simply want to point out that, as an additional matter, there was no evidence that whatever domestic activity there was in the United States, that any of that money ended up in Mr. Scott's Fenero funds.

THE COURT: Okay. So is that your argument with respect to your initial motion?

MS. STANLEY: Yes.

THE COURT: So if we can, let's take these one at a

time. So the government, please respond to that?

MR. DiMASE: Yes, your Honor. It's Christopher DiMase, for the record.

Just so that the organization of the government's argument is clear, I plan to argue the first set of motions, and I believe that Mr. Folly, and perhaps some combination of the other assistants, will argue the more recent motions and that will be addressed, I guess, second.

THE COURT: Okay. Very well.

MR. DiMASE: So I'm going to turn to the arguments in reverse order, and start with the money laundering arguments that were made just now. What I would say as to both of them, the defense is essentially asking the Court to create new law out of whole cloth. As the Court rightly recognized, no de minimus limitation on the amount of money involved in a wire fraud scheme to grant U.S. jurisdiction. Nor is there any statutory or other case law requirement that U.S. funds run through a money laundering vehicle in order for a defendant to be guilty of a money laundering charge.

So let me take those in turn. It is true, your Honor, that something on the order of $50,000 of U.S. victim's funds were proven at trial. Ironically, the defense objected to a third U.S. victim being called, which we named in our witness list and we argued in motions in limine, and the Court eventually precluded that third victim. So it's somewhat

ironic that the defense now stands on the fact that there are only two victims when they, themselves, moved to preclude a third intended victim.

But that being said, their arguments completely overlook additional and very critical evidence on the U.S. jurisdictional hook here. The government introduced a video from July 4th of 2015, in which Ruja Ignatova, the principal leader of OneCoin, announced the opening of the U.S. market for OneCoin. And that's Government Exhibit 204-C and accompanying transcript 204-C-TR. That, in and of itself, is sufficient, along with the interstate wires that were sent by -- and international wires that were sent by Mr. Horn and Ms. Cohen in this scheme --

THE COURT: By Mr. Who?

MR. DiMASE: Mr. Horn and Ms. Cohen the two victims. I'm sorry, your Honor -- to easily demonstrate a U.S. jurisdiction here.

Moreover, those two victims did testify not only about their own investments, but Mr. Horn testified about the investments of several family members and friends. He testified about conferences related to OneCoin that took place in the United States. He talked about promoters of OneCoin that were residing and promoting OneCoin in the United States. And that, on top of the fact that the OneCoin principal specifically opened the market to United States citizens, makes

clear that this had much more than even a de minimus touch on the United States, were that even the law to begin with, which it is not.

The law requires simply a scheme to defraud, to obtain money or property, through false representations and promises, and interstate or international wires in furtherance of that scheme. And those elements were clearly proven through the testimony of these two victims, along with all of the other evidence introduced in the case.

And I would note, your Honor, that there were TD Bank records regarding U.S. bank accounts introduced into evidence at the trial that actually showed numerous other investments by U.S.-based OneCoin investors. Now, they were not the subject of specific testimony at the trial, but you've now got an explicit opening of the market by Ruja Ignatova in the U.S., testimony from two victims who sent interstate or international wires, conferences in the U.S., U.S. promoters and bank records showing additional investments. There's just simply no question, your Honor, that there was a sufficient jurisdictional nexus for the underlying wire fraud scheme here.

Turning to the second issue on the money laundering count, there is no requirement in the money laundering statute that any particular funds go through a money laundering vehicle, or that those funds are the funds that are sought to be concealed through the transactions at issue.

The core focus of the money laundering statute is engaging in transactions with the goal of concealing the illegal source of the funds. It doesn't speak to where the funds exactly come from, geographically. It's simply the evidence must show that the defendant knew that they were of a criminal nature. The defendant need not even know what crime, under the clear case law and the elements that the Court instructed the jury. It's simply that -- and the way that the elements read and the Judge -- that you instructed the jury was that the defendant knew the proceeds or the funds represented proceeds of some form of unlawful activity, not necessarily which form of unlawful activity.

So the defense is trying to import an additional element into the money laundering statute that the defendant knows, geographically, where the funds come from. The government has to prove the underlying SUA, the specified unlawful activity, here, wire fraud; has to prove that the proceeds came from that SUA, here, the OneCoin scheme; and that the defendant knew that these proceeds were somehow criminal in nature. That is all that the statute requires.

THE COURT: But putting the defense's argument in its most stark terms, and putting aside for a second your nexus arguments, are you saying that even if all of the proceeds that the specified unlawful activity was generated overseas and even if all of that money was laundered overseas, it doesn't matter

that any U.S.-based victims had their funds laundered overseas, and that would still be a basis for money laundering conviction here?

MR. DiMASE: Let me back up and parse that out a little bit. There still has to be some involvement in the United States, in terms of the conspiracy, to have jurisdiction over the money laundering charge. And here, the government presented evidence of transactions that passed through U.S. correspondent banks. So that is sufficient to put us in the ambit of venue and jurisdiction on the money laundering charge.

But yet, to your second question, if all of the money came from crimes committed overseas, could that substantiate a money laundering offense? The answer is, absolutely because there are a number of specified unlawful activities that are outlined in 1956(c), the money laundering statute, that pertain to crimes committed overseas.

And the point of the money laundering statute, if you go back to the legislative history, is to prevent the U.S. banking system to be used in furtherance of some of these both domestic and foreign criminal activities. For example, one of the specified unlawful activities is a bribery scheme, in violation of foreign law.

And there have been cases tried in this courthouse about bribery schemes in violation of foreign country's laws that generated money that was then laundered through U.S.

correspondent bank accounts. And so the fact that the crime happened overseas isn't really the question.

THE COURT: Okay. But it's not enough that Mr. Scott was here in the United States; something else had to have happened here in the United States in order for there to be jurisdiction, correct?

MR. DiMASE: I think on the money laundering count, because it's a conspiracy, any essential offense element would be enough, any overt act in furtherance of that conspiracy. So Mr. Scott also took a number of steps in the United States in furtherance of the scheme.

It also happens that transactions that were specific to this conspiracy passed through New York correspondent banks, in addition to the various steps he took here in the United States.

THE COURT: Okay.

MR. DiMASE: But the point is, in this case, the SUA is wire fraud, and so the government concedes that it would have to prove a proper wire fraud predicate in order to convict the defendant of a 1956 count. And that's why the argument, ultimately, as Ms. Stanley, who has conceded at the end, comes back to whether there was a proper jurisdictional nexus on the wire fraud offense.

And for all of the reasons that I've described, your Honor, the evidence was overwhelming on that point and

certainly substantial enough, crediting every inference that could be drawn in the government's favor, for the jury to find that underlying wire fraud SUA was proven. So that, unless the Court has any questions on the --

THE COURT: No.

MR. DiMASE: -- money laundering offense, I'll turn to the bank fraud offense.

So there are a couple of different arguments being advanced by the defendant today regarding the bank fraud offense. One is that this conduct doesn't fall sort of within the ambit of the crime; another is that the evidence, in any event, wasn't sufficient to prove Mr. Scott's guilt; and the third is some combination of a constructive amendment argument and a juror confusion argument. So let me take those in turn.

There is no legal support for this concept that the funds that somebody seeks to obtain from a bank have to be somebody else's funds in order to be guilty of a bank fraud offense. The prime or leading Supreme Court case on bank fraud under the second subsection, 13442 is *United States v. Loughrin* and it holds that the defendant -- that 13442 does not require a showing that the defendant intended to defraud a federally insured bank or other financial institution.

Instead, the government can prove a violation of that statute by establishing that the defendant acquired bank property by means of a misrepresentation. In other words, the

government only has to prove that the defendant's false statement was the mechanism naturally inducing a bank to part with money in its control.

There's simply no requirement in the law, or in the case law interpreting the law, that the money be somebody else's money. And in any event, in this case, it's as the Court rightly pointed out during Ms. Stanley's argument, this wasn't Mr. Armenta's money. The whole argument is based on a false premise. The evidence at trial clearly established that the money that Mr. Armenta was sending to Mr. Scott was Ruja's money.

And if you look at -- I know you won't be able to do this now, your Honor, but if you look the transcript later, Government Exhibit 1056-T, that is a discussion preceding the transfers between Mr. Scott and Ruja talking about getting Mr. Armenta's money back to Ruja. And that's what precedes these transfers, a desire from Ruja, as the evidence showed, to get her money back from Mr. Armenta.

And I think the Court asked some questions about Armenta's sort of bigger-picture role in this, and you know, it's clear from the evidence at trial that Mr. Armenta was another money launderer for OneCoin. He had his own relationship with Ms. Ignatova. There were some calls between them that were introduced into evidence, even a romantic relationship; that he was the one who introduced Mr. Scott to

Ms. Ignatova, and that he received a substantial amount, hundreds of millions of dollars, of Ms. Ignatova's OneCoin proceeds during the scheme.

So all of that was sort of the background, along with these communications between Ruja and Mr. Scott about transferring this money over. So the evidence clearly established it was not his money. And so the idea that because it wasn't -- because it was allegedly his money, there's no bank fraud allegation, this is resting on that false premise to begin with.

I would note that there is a case -- and I'm sorry, let me back up. And I think for that reason, it is very much like *Lebedev*, which is the case cited by Ms. Stanley today, where he hid the fact that there was an unlicensed Bitcoin exchange operating from banks in order to transfer his customers' funds, the same way that Mr. Armenta and Mr. Scott hid the OneCoin aspect of all of this and the fact that they were Ruja's money in order to transfer the funds.

That being said, the government did cite a case in its opposition, *Nejad*, which is a sanctions case. And in that case, the Court held that even though the Venezuelan subsidiary was transferring its own funds, so long as it was lying to get the funds out of banks, that was sufficient to ground a bank fraud offense.

So even if it were the case that the funds have to

be -- can't -- I'm sorry. Even if it were the case that the funds are your own, it's clear that a bank fraud offense can be committed if you lie to the bank to get those funds out.

So let's talk about the sufficiency of the evidence overall and the evidence that proved that Mr. Scott was guilty of a bank fraud offense. I do want to pass up one exhibit. I'll just hand this to the Court's deputy, and I'll provide some copies to counsel as well. This was attached as Exhibit A to the government's reply brief on the underlying motion.

So first, let's address the loan. The evidence admitted at trial was clear that the money was destined for Ruja Ignatova and that it was her money, even as Mr. Scott and others claimed that the loan was to go to somebody named Martin Breidenbach. So that's No. 1.

No. 2. The defense says there's no evidence that the loan was not, in fact, a loan and, therefore, that it was a lie to say so. First of all, there are many, many other fake loan documents that were admitted at trial to -- that paper transactions, much like this one.

And in Government Exhibit 1391, Mr. Scott provides an accounting of all of Ruja's money. I think this is relevant to many aspects of the motions that have been made by the defendant. But this is his e-mail to Irina Dilkinska, Kalina Bahchevanova, Maya Antonova, all people who worked for OneCoin, accounting for all of Ruja's money that he received. And he

says she is asking for available cash balances, meaning Ruja has asked me. And he says: Here are the available cash balances. All loans made are considered available cash for, quote, obvious reasons.

And that, especially when you credit all of the inferences in the government's favor, is an admission that the loans weren't really loans; that they were just transfers back to Ms. Ignatova. And, in fact, the greater weight of all of the government's evidence showed that this is how the scheme worked.

Scott created funds, got fake investors, moved Ruja's funds in through the fake investors, moved the funds out through fake loans, fake transactions just like this one. And when Mr. Scott said this was a loan, to Martin Breidenbach, for a oil field investment, the evidence, crediting all inferences to the government's favor, shows that that was false.

And moreover --

THE COURT: Does that account for the 30 million crypto loan?

MR. DiMASE: This is the 30 million crypto loan, yes. That's what this entry on the e-mail refers to. Because in the evidence at trial and the instruction that was by the Bank of New York Mellon, it was referenced as a $30 million crypto loan for Martin Breidenbach.

And, your Honor, I think you were referring to the

line maybe seven down in the figures here, where it says "crypto loan"?

THE COURT: Correct.

MR. DiMASE: Yes. And, in fact, it says dollar sign next to it, which shows that Mr. Scott understood this was a dollar transaction.

These other -- just to be clear, the evidence at trial showed that these other -- some of these other abbreviations, FEI, FSS, those kind of stand for the various Fenero funds that Mr. Scott was operating and money that would have been in those funds. BOI was Bank of Ireland. BMS was a bank that he had many of these funds at Vida Home and Oceanscape, there was evidence at trial that those were also purported loans.

And so unless the Court has another question on that, I can turn to the sort of fact that he told this to Apex, rather than to Bank of New York Mellon directly.

THE COURT: No, you can go ahead.

MR. DiMASE: So there is evidence in the record that Mr. Scott understood that Bank of New York Mellon, or some U.S. bank, would be involved in this because of the dollar nature of the transaction. And he then told Apex to provide this particular wire instruction, loan for Breidenbach for CryptoReal, and the defense argues that that's insufficient because it wasn't told directly to the bank.

But *Loughrin*, the Supreme Court court case I had

mentioned before, clearly holds that there does not have to be an intent to defraud a federally insured bank, and that the government need only prove that the statement was the mechanism inducing a bank to part with money in its control.

And so, of course, Mr. Scott would have understood that these wire instructions were going to have to be provided to a U.S. correspondent bank in order to move this money through. The fact that he didn't tell it directly to Bank of New York Mellon is legally insignificant under the prevailing case law regarding bank fraud.

With respect to the Armenta transactions, your Honor, again, I think that the defense argument glosses over some of the critical evidence on those transactions. As I said, there was discussion earlier on of Ruja wanting her money back from Scott. That's Exhibit 1056C.

There is evidence specifically that Scott knew that the funds from Armenta would come from the United States. That's Exhibit 1360. There's testimony that Armenta lied to the banks about the source of funds and the nature of the Fenero funds. That's at, among other places, transcript cite 844 and 859 to 60.

And the evidence, especially crediting all reasonable inferences to the government, clearly showed that Scott understood Armenta would need to lie to the bank because, as the Court pointed out, the whole purpose of these things, the

Fenero funds, was to obscure where the money was really coming from, who owned it, who were the investors.

And he knew that, as part of that, Armenta would have to pretend to be an investor in a legitimate fund, and that he would send the money through the bank saying that he was an investor and claiming that it was his money when it was, in fact, Ms. Ignatova's money.

And the idea that the bank would have transferred the funds if Armenta had told the whole truth is kind of preposterous. If he said, these are Ruja Ignatova's funds, the head of OneCoin, and I am sending them purporting to be an investor in the Fenero funds, which are legitimate investment funds just disguised to be that, there's no way, obviously, the bank would have sent that money.

He also had Mr. Armenta sign an investment agreement as an investor in Fenero. That's Government Exhibit 1140. And again, that's just more evidence of their collusion, where Armenta would pretend on paper to be an investor in these fake funds.

And then finally, Mr. Scott knew that at least one of the transfers would pass through a correspondent bank in SDNY. That can be found in transcript 917 and Exhibits 406 and 417.

Let me turn last, your Honor, to the constructive amendment, slash, confusion point. The core principle under -- the core purpose underlying the constructive amendment doctrine

is both that the defendant has appropriate notice, and that he can plead guilty or not guilty to subsequent charges and exercise any double jeopardy rights he might have.

I don't think this was argued at length today, but it is argued in the papers. And the bottom line is that the Court's decision not to instruct the jury that only three FDIC banks were implicated here was appropriate. It didn't change the essential legal theory or evidence used to convict Mr. Scott.

And the core criminality was the same, whether you limited it -- the charge to those three specific banks or to FDIC insured banks. And that was really the only question in the jury instructions, whether FDIC insured banks should be followed by these three specific banks.

And I think it's very clear from the jury instructions that the jury would not have been confused about the scope of the bank fraud charge even without those three banks. The jury instructions said that the "object must be to tell lies to an FDIC insured bank." There's no ambiguity in that.

No matter how many international financial institutions were involved here, there's no ambiguity to the jury's instructions clearly identifying the banks that were the subject of that crime. Whether it was just the three, four or whatever was proven at the trial, it was very limited in the instructions to FDIC insured banks.

And just on the bigger picture question of conflation of these two offenses, the Court -- and this is laid out on page 37 of the government's initial response. I won't go through it in detail, but the bottom line is the Court clearly instructed the jury on the elements of the two offenses, and they're not anywhere near the same.

The money laundering statute involved conducting transactions with knowledge that they derived from criminal activity, and proof that the proceeds actually came from an underlying specified unlawful activity, with the intent to conceal its source, nature, origin, et cetera; where the bank fraud statute is clearly about making false representations to a bank to obtain money or property under the control of that bank, which is FDIC insured.

And so given the difference between elements and the clear instructions that the Court provided to the jury on those two crimes, there's just no way to reasonably conclude that the jury would have been confused.

And I would note that, on this point, the defense points to no specific evidence of juror confusion, like a jury note where the jury expressed confusion regarding the applicability of these counts or how to distinguish bank fraud from money laundering. The defense points to no such evidence. They simply speculate, based on a clear record of appropriate jury instructions, that the jury must have been confused

without really any evidence, your Honor.

One moment.

(Pause)

I'm happy to answer any other questions the Court may have on these issues.

THE COURT: No, no, that's fine.

So then let's move on to the supplemental motions, and I think they involve three separate areas, one which arguably took place entirely prior to trial, and that's the information concerning Ms. Dilkinska and her whereabouts; one that took place during the trial, that the government now concedes, that Mr. Ignatov provided perjured testimony; and one area that arguably took place entirely after the trial, and that's Mr. Ignatov's use of the cell phone while incarcerated.

So Mr. Devlin-Brown or Ms. Stanley or Mr. Garvin, I'm happy to hear you.

MR. DEVLIN-BROWN: Thank you, your Honor. I'll get us started with that, and as I think you hear my arguments, really the issues do blend together when you're considering our application for a new trial.

And I actually want to start with and really focus most of my argument on the *Wallach* case in the Second Circuit and the standard articulated there. I am going to come to some of those other issues, but I think, unlike the sort of general new trial standard, right, which is the court orders a new

trial when it's concerned there may be a perception of a manifest injustice; so that's a very broad standard.

When a witness perjures himself, and when it's shown to be perjury, as opposed to mistake, which we'll show here, about the testimony regarding the July 20th meeting, when a witness commits perjury, No. 1; and No. 2 when the government has awareness at the time of trial that the witness is testifying falsely, *Wallach* provides a very clear direction. And it says that, in those cases, where those things are established, a new trial is virtually automatic, that's a quote, and it's required unless there is, quote, any reasonable likelihood that the false testimony -- sorry, it's required if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.

So here, as we'll argue, the Court can't exclude certainly the possibility that the jury was impacted by Mr. Ignatov's, Konstantin Ignatov's, perjury and, therefore, *Wallach* requires a new trial. Now, we made other arguments, your Honor, and I will get to some of those, but I think that is where really the key dispute we have with the government is, whether this virtually automatic new trial standard that *Wallach* articulates applies here, and it does.

Before I get into that, that argument, though, I think there's a threshold issue that I need to address, and that is that the government makes an argument in its brief that there's

a time bar to the Court's consideration of the vast majority of what we bring up.

The government takes the position that the supplemental motion for a new trial was timely with respect to the newly discovered evidence that the laptop was -- that Mr. Ignatov perjured himself about the laptop. And your Honor recalls that was disclosed when Mr. Duncan Arthur, who assisted the government in investigations, first reported it to a Manhattan DA investigator working in London. And then when he didn't get any traction on that, reported it directly to us.

So the government's position is, that's fine, that's newly considered evidence. You can consider the perjury about that, which has been admitted to, but the Court's barred from considering whether Mr. Konstantin Ignatov's perjury extended to the July 20th, 2016, meeting, where he testified, now indisputably inaccurately, that Ms. Dilkinska was there.

That argument is completely wrong, but unless the Court waives me away now and says, I've already looked at that, I'm rejecting it, I think I need to go through it, at least briefly, because, obviously, it's consequential if the Court were to decide that these issues are time barred.

THE COURT: You can address it briefly.

MR. DEVLIN-BROWN: Okay. I will. So, first, there's really three arguments, and we outline them in our brief. But the first argument is that the government here concedes, right,

that the motion challenging Mr. -- asking for a new trial based on Konstantin Ignatov's perjury is timely. It's timely with respect to the laptop.

Their position is, you have to have not just newly discovered evidence about the laptop to make a timely motion, but newly discovered motion about anything you're now asking the Court to consider the perjury extended to. They point to no authority for that. They point to no good reason why that should be the case or in the interest of justice. So we don't think it's necessary to show newly discovered evidence about each aspect of the perjury, including Ms. Dilkinska's lack of attendance at that July 20th meeting. That's the first point.

The second point, which I think is the most fundamental one, your Honor, is there was newly discovered evidence about Dilkinska not attending the July 20th, 2016, meeting. At the time of trial, right, there were these e-mails, which we'll talk about later, Defense Exhibits 550 and 552, which strongly suggested that Dilkinska was not at that meeting. These are the e-mails where she's saying she's traveling all week.

As your Honor recalls, the government opposed our efforts to admit those into evidence by misciting Second Circuit law, and they now concede that was an erroneous decision the Court made as a result. But we have those e-mails.

However, after trial and, in fact, after the initial supplemental motion was filed based on the disclosure by Duncan Arthur that there was perjury concerning the laptop, a source came forward with a copy of Ms. Dilkinska's passport. It had stamps on it showing that she was in India. The government sufficiently authenticated that to produce it to us, and then obtained and produced travel records, Indian government records, showing she was in India on those dates. That's all newly discovered. That's hugely significant.

THE COURT: Well, I mean, it's newly discovered, but it was arguably discoverable prior to trial because you had information sufficient to establish, at least in your mind, that Ms. Dilkinska -- I'm sorry if I'm mispronouncing her name -- was not at that meeting and, therefore, you could have looked at her travel records or whatever else.

I mean, there's any number of steps you could have taken. I understand that there's a time limit, right, because you're preparing for trial. But it's newly discovered because it came out now, but it was discoverable at the time. And so how should I account for that?

MR. DEVLIN-BROWN: Yeah, I think, your Honor, the government does cite various cases where, you know, there's some information the defense, with diligence, could have found out during the course of its investigation. But it ignores the cases where there's witness perjury because there, the law is

very clear.

And what the government's doing is confusing the defendant's knowledge of the facts. Like, the defense team, yes, we knew, as often happens in a trial, this witness is lying. We knew that fact. We had some evidence, actually, to -- admissible evidence, it turns out, that would have helped prove that fact. But we didn't have the most powerful pieces of evidence and, you know, we could not have gone to the Indian government and gotten that dispositive evidence during trial or, frankly, any time. That's a government-to-government law enforcement channel.

But actually, your Honor, I think all you really need to do to resolve this is read *Wallach*. That's the leading Second Circuit case.

THE COURT: Maybe I'll hear differently, but I don't understand the government to be conceding that Mr. Ignatov perjured himself on that point. I mean --

MR. DEVLIN-BROWN: The government --

THE COURT: Go ahead.

MR. DEVLIN-BROWN: The government's position, which we'll come to, because it really is the meat of it, is that he did testify inaccurately. Like, there's zero question that Irina Dilkinska was in India on that date, zero question. I don't think the government is going the dispute that. Their argument is that it was a mistake, Mr. Ignatov made a mistake.

But the difference to whether the Court can consider the newly discovered evidence, Wallach is very instructive because it almost exactly mirrors the facts of what happened to Mr. Scott. In *Wallach* there was a cooperator who perjured himself, lied about his gambling addiction and how he continued gambling even when he said he didn't.

And the defense in that case cross-examined Wallach at trial about that -- not Wallach, but the witness at trial; so they tried because they knew it was false. And then, as the Court says, they actually offered what the Court described as powerful evidence at the trial in the form of some gambling records that he was lying. The Court didn't admit it. It was intrinsic evidence for impeachment. No argument there, that that ruling was wrong.

Then after the trial, the government disclosed additional evidence that made clear that this person was lying, and in fact, they prosecuted their own cooperator for perjury. And it didn't even come up in *Wallach*, the Court didn't even consider the suggestion that this was somehow time barred, and that's exactly what happened here.

Mr. Scott knew there was a lie from the outset. We cross-examined Mr. Ignatov. We tried our best, with the exhibits we had, which were not admitted. But then, can you think of a better piece of evidence that she was not there, dispositive proof she was in India? That's what we couldn't

get then.

We made a Brady request in the middle of trial saying, government, please give us anything in your own records or identify, if you can, evidence that she wasn't there. But there's no way we could have gotten that during trial.

THE COURT: There's a suggestion in the government's papers, and I, quite frankly, don't recall what happened, where I believe I gave you the opportunity, if you wished to use those Exhibits 550 and 552 or 7 to refresh Mr. Ignatov's recollection, and you didn't take me up on that invitation. Is that actually what happened during the trial?

MR. DEVLIN-BROWN: No. I recall that as well, your Honor, and we looked at the transcript. And the government -- I mean, not the government. The defense moved to refresh his recollection. The government opposed. Your Honor wisely ruled that fettuccini can refresh recollections, and I then showed those exhibits to Mr. Ignatov and asked him: Does that refresh your recollection, or similar words, and he said: Nope, my testimony is the same. So we crossed. We tried to get those in. This is newly discovered evidence.

But the third point as to why the Court should consider all of this is the excusable neglect doctrine. I don't think you need to reach that doctrine. The government cites it briefly and says, oh, it doesn't apply. We analyze in our papers why it does, but the excusable neglect doctrine is

basically an efficiency doctrine. Right? It's balancing the need for the Court to consider issues of perjury with the need for finality, et cetera.

This is an obvious case. I mean, the Court is considering, in this motion, timely issues with perjury with respect to a laptop. The idea that it would prejudice anyone to also consider this newly discovered evidence that we have at the same time we're arguing about, at the same hearing, of perjury regarding Dilkinska's presence at the meeting, of course it should be considered, and the excusable neglect doctrine, should you need to reach it, gives it it's due in law.

But I'll put the timeliness issue and whether the Court can consider all of this to the side for now. I'm happy to answer the Court's questions, of course.

THE COURT: No, you can go ahead.

MR. DEVLIN-BROWN: And turn, really, to *Wallach*. So the principal argument we make for a new trial, and it's not the only one, but it's based on *Wallach*. And *Wallach* identifies what it calls two discrete standards "that courts should apply when assessing whether a new trial should be granted based on witness perjury." And *Wallach* says, "where the government knowingly permitted the introduction of false testimony," a new trial is "virtually automatic."

And they go on to say if the prosecution knew or

should have known of this at the time of trial, conviction must be set aside if, quote -- this is the standard, "if any reasonable likelihood that the false testimony could have affected the judgment of the jury."

So whether that standard applies is of great significance to your Honor's consideration of this motion because if that applies, this virtually automatic reversal standard, then we're not talking about plain error and what all the other evidence might have been or harmless error. We're talking about a standard that says, unless your Honor can say there's no chance that this even could have affected the judgment of the jury, he needs a new trial.

So the government says that standard does not apply. We say it does. And there's two arguments the government raises, and I want to take on both of them. So your Honor alluded to the first one a moment ago. The government's first argument is that, sure, his testimony about the July 20th meeting with Dilkinska was false, it was factually wrong, but, they say, it was an innocent mistake and, therefore, it's not perjury.

And the reason that's significant is we agree with the government on this. That whole *Wallach* standard, it only applies if the witness committed perjury by a preponderance of the evidence. If the witness committed perjury, then it applies. If it doesn't, if it was an innocent mistake, we may

have other new trial claims because there's still due process concerns and other issues, but *Wallach* only applies if it's perjury, and we'll address that.

And then the government's second argument, their second qualm about applying this standard, is they say that even if it was perjury by Mr. Ignatov, the *Wallach* virtually automatic reversal doesn't apply because the government had to know that the testimony was intentionally false at the time of trial.

And here, the government admits it in their papers. They say they should have known that the testimony was inaccurate at the time of trial. They actually did know, but let's take should have known because *Wallach* says it's the same thing. They say they should have known, but they did not know it was intentionally false, and they're wrong on that count.

And I'll spend some time on that too because *Wallach* and the cases it cites, do not require and do not make a distinction between what the government's obligations are when it knows its witness is intentionally testifying falsely or when its witness is testifying falsely perhaps by mistake. There's no distinction, and we'll go through that.

But let me first do the first issue the government raises, which is their claim that it was mistake and not perjury. And the Court decides that by a preponderance of the evidence. The case law is clear. We cited it in our papers.

And so I'm not going go through the entirety of the argument that we make in our papers on this, but I think the evidence is quite clear, certainly a preponderance that this was false testimony on purpose by Mr. Konstantin, it was perjury and not a mistake.

The first argument is that a mistake is just implausible here because Konstantin was clear that he met Mark Scott only one time, and he met him in the Sofia offices of OneCoin. And the government pinpointed that meeting down to the hour with all of their WhatsApp messages and flight records and everything else. It was on July 20th, 2016, in the afternoon.

And Mr. Konstantin gave detailed testimony that Mr. Scott came to the offices, was ushered in to see Ruja Ignatova, Konstantin's sister; and that later Irina Dilkinska arrived; that Mr. Konstantin Ignatova brought her in to where Mr. Scott and Ms. Ignatova was meeting; that Ruja did something she'd never done -- that's why it stood out to him -- she'd never done before, which is tell Konstantin: Send everyone home who's on that floor. Like, this was a sensitive meeting.

And then he recounts how Dilkinska, after the meeting, talked to him about it and said: Oh, my God -- I'm paraphrasing -- but we had to stay there so long because Mark Scott just couldn't get it. So it was detailed testimony, and it couldn't be confused with another meeting. It's the only

time that Mr. Konstantin ever met Mr. Scott.

And I don't want to dwell on this right now because it's a little fact intensive, but the point I think is significant. The government, in its final brief, in what I consider a desperate effort to suggest that Mr. Konstantin may have been confused rather than perjuring himself, they said, no, no, look, Mr. Scott met Irina Dilkinska in September of 2016. And they suggested -- they said Konstantin may have just been confused about the date.

And that's part of the problem here, your Honor. There's no indication that the government went back and talked to Konstantin and said, hey, was there another meeting with Dilkinska and Mr. Scott in September? They just posit it because they found an e-mail, not admitted at trial, I don't think -- well, putting whether it was or was not, there was an e-mail at trial where there was talk between David Pike and Dilkinska that Dilkinska was going to see him on a specific date in September. But the government's own evidence --

THE COURT: I'm sorry, see who?

MR. DEVLIN-BROWN: That Irina Dilkinska was going to meet Mr. Scott on September 15th of 2016; so there's an e-mail where there's talk about a meeting. But then, if you look at the government's own evidence in its brief, it's clear, almost certainly, that there was no such meeting because it was a two-day trip that Mr. Scott -- and we -- we'll tell you the

page of the brief just so you can have it handy after, pages 5 and 6 of our final brief, which I hate to call the sur surreply but that's just the way the facts evolved; so there was a lot of briefing.

So Mr. Scott was there for two days. You have flight records and things that show that. He was supposed to meet with Ruja Ignatov, not in the OneCoin offices, but at The Residence, which is a private club, on the two nights that he was there.

You then see in the e-mail chain that Mr. Scott didn't make the first meeting at all. He was working on another project. He was then going to go to the only meeting he has with Ruja at The Residence, and Konstantin is arranging a car.

And then they exchange dialogue, where Konstantin says, in substance, hey, Irina Dilkinska has papers to give you. Do you want me to bring them to you personally or at the meeting? And they decided instead Konstantin was just going to put it in the car that he's sending, the car service that he's sending to pick up Mr. Scott.

So you read that in its entirety, the government's own exhibit, and there's virtually no chance -- they didn't even appear to ever ask their witness about it -- that Mr. Scott met with Ms. Dilkinska on that trip, much less a meeting at OneCoin's offices, much less a meeting that Konstantin Ignatova attended or could have confused with any of this.

It's just speculative nonsense that's largely disproven by the government's own evidence, but that's what they offer as to why it was a mistake. So that's the first argument. It's implausible this detailed testimony was a mistake.

The second argument -- and I don't want to belabor it because you'll read the transcript and it speaks for itself, at least portions of the transcript we cite in our briefs, you're probably not going to read the entire trial. But Konstantin Ignatova was repeatedly crossed about this multiple days.

He varied between saying he was a hundred percent certain that Dilkinska was at that meeting, and then he was almost a hundred percent certain. He didn't equivocate. He didn't equivocate even after being shown e-mails that would make someone who was perhaps mistaken, at least temper their testimony. Oh, wow, here's Defense Exhibit 550 showing that she was going to be traveling that week. He did not hesitate one iota.

And then, you know, there's another thing when your Honor is assessing did Konstantin make a mistake or did he perjure himself to make that sole meeting he saw with Mr. Scott seem much more dramatic. And that third factor is you don't consider what Mr. Ignatov says, you know, as if he just came into this room and there's no track record for him. He has a track record.

He's admitted to perjuring himself already in this trial. He perjured himself about the laptop. He couldn't get out of that one. Duncan Arthur said, no, no, no, that laptop that Konstantin said he threw in the trash, I took it back to OneCoin personnel. So he lied about that already. He lied to the government about it repeatedly in prep.

He continues to lie about the laptop. He absurdly says to the government that, oh -- again, I'm paraphrasing -- but, sorry, the laptop is gone, but it just had pictures and some presentations that were on YouTube from the company anyway. Duncan Arthur looked at it, said it has voluminous OneCoin files. And it also is absurd, right, that if it just has pictures, you don't need to worry about it being discovered.

He had a cell phone in the MCC, which was a breach of his cooperation agreement. Through his attorney, he lied to the government and said, oh, the cell phone was just for complaining about the MCC, didn't talk about the case at all. When the government finally got the password from Mr. Ignatova and reviewed the cell phone, he talks about the case a lot.

We cite a couple exam peoples in our papers. There's a pretty disturbing conversation between him and a source what he leaves in the voicemail about whether certain papers that Ruja Ignatov wanted to be destroyed were, in fact, thrown away. So he has a track record of continuing to lie, and that has to

be taken into account by the Court as well.

But here's the other point, your Honor. So I think, certainly, that if you were considering by a preponderance of the evidence against what we've said, purposeful lie to embellish the sole meeting, that makes much more sense than mistake. But if the Court disagrees and takes the government's position, it can't do that without offering us a hearing because -- so essentially, the choices are, the Court should accept that he perjured himself, at least for purposes of this motion, or it needs to give us a hearing because it's a disputed factual issue, and it's hugely material.

Whether it was perjury or an accident means *the* *Wallach* standard applies, with that standard that I discussed before of a virtually automatic reversal, or it doesn't apply. So that's -- your Honor, of course, is familiar with hearing is required when there's material disputed factual issues, but the Second Circuit has actually addressed it exactly in this context.

There is U.S. v. Spinelli, S-p-i-n-e-l-l-i. These cases are cited at the end of our final brief in the discussion about a hearing. So that was a case where in the District Court there was a question about whether this virtually automatic reversal *Wallach* standard applied. There was a disputed factual issue.

The prosecutors in that case put in affidavits, and

the District Court said, no, the virtually automatic standard doesn't reply. I'm going to rely on the prosecutor's affidavits, and the Second Circuit said, no. They said "because the defense had no opportunity to challenge the prosecutor's statements, we cannot affirm on the basis of that finding."

So that's the bottom line on this issue, your Honor. I think the record is sufficient that he perjured himself, but if not, we do want a hearing with Mr. Konstantin being present and being called to address these issues.

THE COURT: What about if I were to determine -- let's see what the government has to say, but if I were to determine, well, I'll grant you that Mr. Ignatov lied about the laptop, and I find by a preponderance that he lied about the meeting in July 2016, but given the rest of the evidence at trial, so what?

I can rule in your favor on that issue and still find that a new trial, or even a hearing, is not required because the strength of the evidence is sufficient for me to have a great level of confidence that an innocent man was not convicted.

MR. DEVLIN-BROWN: So I'm going to get into the details of the strength of the evidence in a bit, but the short answer to your Honor right there is, you wouldn't be applying the standard of, am I convinced an innocent man has not been

convicted? That's a general standard for rule 33.

That might be the standard under *Wallach* if you find that the virtually automatic reversal standard doesn't apply. But if the virtually automatic reversal standard applies, which it's meant -- and I'll get into it -- it's meant to penalize the prosecutors. Right? It's meant to give an added incentive for prosecutors not to permit testimony that they know at the time of trial is false to go uncorrected. So --

THE COURT: So do I have to find by a preponderance that Mr. Ignatov lied and, further, find by a preponderance that the government knew?

MR. DEVLIN-BROWN: Right. So that's the second disputed factual issue, not that the government knew. I don't think there really -- the government concedes in its papers that they should have known. They point to stuff on these Greenwood electronic devices that they never looked at, but if they had, they should have known.

THE COURT: Okay.

MR. DEVLIN-BROWN: And I can get to this, too. They knew. Defense Exhibit 550 and 552 provides very clear evidence that Irina Dilkinska was almost certainly not at that meeting. 550 was -- the meeting is on a Wednesday. 550, Defense Exhibit, is where Dilkinska's e-mailing Scott saying, I'll be traveling the entire week. So you would think that that means through the following Wednesday.

And then the second e-mail, 552, is as Mr. Scott saying, hey, I'm on the airplane. I'm coming down and landing, and she's saying: I'm traveling too.

So those two things strongly suggest that she -- I mean, more than strongly suggest. I think almost prove, there could be some tiny doubt, but they very strongly lead to the conclusion that she was not at that meeting.

And the government, they don't like to talk about the significance of those e-mails, but they say, hey, we should have known. They have conceded in their brief, we should have known based on the Greenwood devices. And "should have known" is just as good, your Honor.

I mean *Wallach* essentially applies a conscious avoidance standard to the government here. It talks about "knowing" or "should have known" and says that the government can't "consciously avoid recognizing the obvious" in that case that its witness was not telling the truth.

So where does the government really quibble here? This is, I think, probably the most significant legal issue for your Honor to consider in evaluating this because the government says -- they don't provide any cases, they don't analyze it. But they say in their papers that *Wallach* doesn't apply because the government, according to them, has to know, not at the time of trial, not just that the testimony was false but that it was intentionally false.

So in other words, the government's position is *Wallach* says this rigorous standard applies only when the government knows its witness is actually, intentionally perjuring himself, as opposed to being mistaken. And that's just wrong.

Now, I will concede that if you read all of the Second Circuit case law that talks about *Wallach* -- there's Wallach, there's *Stewart*, there's some others noted in our brief -- there's not always a lot of rigor when it's not the central issue in the language used by the Second Circuit. Sometimes they say the government's awareness of perjurious testimony. Sometimes they say the government's awareness of false testimony.

For example, *Stewart* describes the standard as being "based on the government's awareness of false testimony prior to the conclusion of trial."

Wallach says both things. It says the virtually automatic reversal standard applies when the government is aware that the testimony at trial was false. In another place it refers to the government's awareness that the testimony was perjurious; so I think the government is hanging its hat on that.

Look, in one place *Wallach* says the government's awareness at the time of the trial that the testimony was perjurious, they have to know it was perjurious. But look at

the cases cited in *Wallach*, your Honor. Why does *Wallach* adopt this more rigorous standard?

It starts citing back to the Supreme Court's cases -- these are all in our brief -- like *Napue v. Illinois*, *Mooney v. Holohan*. These are cases that establish the proposition of constitutional law, which I should add is also an ethics standard, that the prosecution is not permitted to proceed to a verdict on a case based on false testimony. It can't call a witness who is testifying falsely, and these cases say if it's aware of false testimony, it has to correct it. It has an obligation to correct it.

That's what that line of cases say. And you know what, your Honor, nowhere in that line of cases, nowhere in that line of cases do courts draw a distinction between the prosecutor's obligations when it knows false evidence is going to the jury but could plausibly say, I think the witness is making a mistake, versus cases where the prosecutor says, I know false evidence is going to the jury and I think the witness is saying it on purpose.

Because, you know what? It doesn't matter. A jury is supposed to decide based on testimony that is truthful. And when prosecutors know testimony is not truthful, even if they think it's mistaken, that's their duty to correct it. So I think if you look at those cases, it's clear that *Wallach* is saying if there's witness perjury, and if that falsity of the

witness' testimony is known by the government at the time of trial, this rigorous standard applies, and there should be virtually automatic reversal if there's any reasonable likelihood the false testimony could influence the jury.

So that's essentially it, your Honor. I'll move to just one or two other arguments before I leave, but just if you're evaluating under that standard, as I think you should, as I think the Second Circuit requires, I don't think it's a close call. Look at the facts of *Wallach* again, right?

Wallach reversed when the cooperator lied about how long he kept gambling. It's not even an illegal activity. He just wasn't telling the truth about how long he gambled, and *Wallach* says that's a big deal because he said he had turned over a new leaf. This is a case where the sole cooperating witness perjured himself about the -- indisputably about the laptop, and also lied to the jury about the only meeting he ever had with Mark Scott.

And I don't think you could possibly exclude the possibility that the jury relied on that, and if the jury had known he perjured himself in a way where he's inventing details about a meeting to make Mr. Scott look worse, that would call into question a huge amount of his testimony because, as your Honor recalls -- and I can get more into the evidence points later.

But as your Honor recalls, he said Mr. Scott, he's one

of the money launderers for OneCoin. He related all of these terrible things that people supposedly told him about Mark Scott. And the jury might start to wonder, if he's proven to have lied about the one meeting he knew, you know what, I wonder if this guy is embellishing? I wonder if this guy is shading things? And if you're thinking about it that way, I don't think there's any chance that there's a fair trial.

Now, I'm proposing, if it's all right with your Honor, to -- the government, in both of their briefs, talks about all of the overwhelming evidence. If *Wallach* applies, I don't think we really need to get into each piece. I do have some responses to all of their evidence. It's up to your Honor.

THE COURT: No. I'd rather just deal with the discrete issues.

MR. DEVLIN-BROWN: Okay.

THE COURT: So let me turn to --

MR. DEVLIN-BROWN: Just one more minute before --

THE COURT: Okay.

MR. DEVLIN-BROWN: -- I sit down, and I can come back to the evidence later.

So *Wallach* is our principal argument, but I don't want to forget the error in excluding 550 and 552, which I think today I feel it's even more significant than when briefing the matter because looking through all of these testimonies, all of these cases about perjurious testimony at trial, where the

government has some awareness of its falsity, all of these *Wallach* cases, I've never seen one like this, which is where not only is that the case, but there's actually evidence, there's exhibits, the government's own reliable exhibits, that tend to show -- that would correct the issue, that would go a long way to correcting the falsity that the government is aware is being shared with the jury.

And I've never seen a case where the government opposes that. This cites Second Circuit law, and that exculpatory evidence on that point is kept out wrongly, and that -- again, that's why these other issues matter because -- and that is, I think, one of the more problematic things here. The government knew -- I'm not going to say they knew he perjured himself, that his intent was there, but they knew that testimony was almost certainly false.

They knew there were these reliable e-mails that would have let Mr. Scott argue to the jury that Konstantin Ignatov is telling you the false things about Irina Dilkinska being at that meeting. She almost certainly wasn't there. They have an obligation, under the Constitution, to find a way to correct that false testimony. The defense gave them. Right? Let's put those in.

They opposed that, and I think the teaching point from that, the principle from that, is that if the government, when it has a duty to correct false testimony is going to oppose

reliable e-mails that would correct it and say that they're hearsay, it better be certain beyond a reasonable doubt because it has an obligation to correct that false testimony, and the government didn't live up to it here. Instead, they miscited Second Circuit law, and it was kept out.

THE COURT: But I mean, putting aside for a minute the law -- if I can do that from where I'm sitting -- we all were aware of those e-mails. And the government, obviously, made a determination that those e-mails did not definitively disprove Mr. Ignatov's testimony or anticipated testimony. And I agreed, in the moment, that those e-mails did not definitively disprove the testimony.

So why isn't that enough for me to determine, at this point, that the government did not knowingly allow perjured testimony to go to the jury?

MR. DEVLIN-BROWN: With respect, your Honor, that was not the Court's reasoning. The Court's reasoning, right -- we had offered the e-mails. We thought we had an agreement from the government to admit 550. They said they would, and then they reversed course on the same day. There's e-mail traffic where, without explanation, they reversed course.

So we briefed the issue. They come into court. Your Honor says, are you prepared to discuss it? They say, yes, and they argued that a portion of a case, which we didn't discuss, imposed a requirement under Second Circuit law that, even

though typically statement of a plan, a future plan is admissible as a hearsay exception, it requires some sort of independent corroboration before it can be admitted.

And your Honor said something to the effect, and I don't want to quote you, but something to the effect of, you know, I guess that that's somewhat strength. That's not what you said, but it's certainly was not on the merit of I don't think these e-mails are significant. It was, I guess that's Second Circuit law. If you don't have this independent corroborative evidence, you can't put them in.

And then as to what the government's determination about those e-mails was, I don't know. I don't know why they reversed course on allowing one of them to come in, but I think if you read those e-mails, there's no conclusion you can have other than that they cast very, very substantial doubt on the accuracy of Konstantin's testimony that Irina Dilkinska was at a meeting on a week where she had e-mailed Mark Scott saying that I'll be traveling all week.

THE COURT: Okay.

MR. DEVLIN-BROWN: And I suggest -- I want to be clear. I don't think the government purposely misstated Second Circuit law. Not saying that at all, but I think the government here did not want their witness' credibility to be called into question. Maybe they thought it was a collateral issue. I don't know.

I don't know why they opposed those e-mails and didn't let the defense just argue that the guy wasn't telling the truth. But that's why, and I'll sit down, more down after this. But this is just the final piece why some of these other points we make about the phone at the MCC and all those things add up.

Because I think what you have here, your Honor, is a pattern where the government prioritized protecting its cooperating witness, which is a fine thing to do, to a degree, but they prioritized it over their obligation to only allow truthful testimony to go to the jury and to allow the defense every opportunity to make sure it does.

So when they dumped -- and I don't want to get bogged down in details, unless someone wants me to later -- but when they dumped ten devices from Greenwood on the defense a month before trial, that had almost a million pages and maybe had some evidence that could have helped us disprove it, that was a problem. The conduct that they undertook at trial that was already described, that was a problem.

When, after trial, Konstantin breaches his cooperation agreement and has a phone in the MCC, and that wasn't disclosed to the defense, and there's case law saying a breach after trial should be disclosed, that would have at least let us start to pull strings. Right, your Honor? It's not a hugely material point, but it would have allowed us to do that.

They didn't disclose that. They didn't look at the contents of it, and then most egregiously, right, there is an investigator, who is part of the Manhattan DA's office detailed to the City of London Police, who gets a credible report from a guy who has provided reliable information to law enforcement saying, hey, this witness lied, the government witness lied at Mark Scott's trial, and doesn't disclose that to the defense? That's part of a problematic pattern, and that, in addition to really the core point in *Wallach* is why a new trial is in the interest of justice.

THE COURT: Thank you, Mr. Devlin-Brown.

Mr. Folly?

MR. FOLLY: Yes, your Honor. With the Court's indulgence, can we request just a two-minute break so that I can run up and use the facilities?

THE COURT: Absolutely.

MR. FOLLY: Thank you.

THE COURT: Five minutes.

(Recess)

THE COURT: Everyone, please be seated.

Mr. DiMase?

MR. DiMASE: Thank you, your Honor. Mr. Folly will be arguing this next piece, but I just wanted to correct one very minor error in my argument earlier. I referred to page 37 of our responsive brief in the first set of motions for the

elements of the two offenses the Court instructed the jury on, bank fraud conspiracy and money laundering conspiracy. It should actually be pages 38 and 39, in case the Court is using this transcript as a reference point later.

THE COURT: Okay. Mr. Folly?

MR. FOLLY: Thank you, your Honor.

THE COURT: Let me ask a quick question to see if we can't just all go home now. Does the government consent to having a hearing on these issues?

MR. FOLLY: Your Honor, we do not consent to having a hearing on these issues, and we do not think that a hearing is necessary to resolve the motion in front of the Court. There's two independent reasons for that, which I'll be happy to address them, but I think it will be easier after I've done sort of the core arguments on the merits.

THE COURT: Very well. Go ahead.

MR. FOLLY: I'm primarily going to address Scott's core arguments regarding perjury and the duty to correct. As the Court just heard, his primary basis at this stage for a new trial rests on two pieces of testimony from the cooperating witness, Konstantin Ignatov.

The first is testimony, as you know, about the manner in which he got rid of a laptop, which was an incident that took place after the conspiracy and was not connected to any of the issues at trial. And the second is testimony about a

meeting that Ignatov himself did not attend between Ruja Ignatova and Mark Scott in July 2016.

Scott's motion fails on several threshold issues, which I'm going to go through briefly in just a moment. But to be very clear at the outset, even if the Court were to find in Scott's favor on all of these threshold issues, his claim fails on the merits because the false testimony was not material to the jury's verdict under governing law.

Independent evidence, evidence completely separate from Ignatov's testimony, supports Scott's conviction. Just to put all of this in context, Ignatov offered limited testimony at all against Scott that went to the core issue that was in dispute at this trial, which was whether Scott knew that the proceeds he was laundering came from unlawful activity.

For example, it was undisputed that Ignatov only met Scott once, never spoke with him on the phone, never texted with him, never attended any meetings with him, never e-mailed with him about anything other than travel and logistics, and had no knowledge, none, of what Ruja or Irina Dilkinska or other co-conspirators had discussed with Scott about OneCoin being a fraud scheme.

So Ignatov, at the trial, had essentially nothing to say on the critical issue that was in dispute at trial, whether Scott knew that the money that he was dealing with came from unlawful activity. Instead, at trial, the government proved

that, and proved all the elements against Scott, through the use of independent evidence.

I also want to just put the false testimony into context itself. The laptop testimony clearly had nothing to do with Mark Scott, and he does not claim otherwise. He doesn't claim that in his briefs, and he hardly mentioned it here today.

The second piece of inaccurate testimony about the July 2016 meeting was also immaterial to the jury's verdict under governing law. Again, it's undisputed that Scott met with Ruja, the actual leader of the OneCoin fraud scheme, in Sofia, Bulgaria, at the OneCoin office.

The only alleged inaccurate portion of his testimony concerned the presence of Dilkinska at that meeting in July 2016, and as we now know, she was in India at the time of the meeting. But it's essential to keep what he said about the meeting in context. He was not told what was said at the meeting. At any point in time, he did not testify to what was said at the meeting.

So the question is simply whether his inaccurate memory about Dilkinska being present at that meeting was material to the jury's verdict. As I'll explain later, it clearly was not. It had nothing to do whatsoever with Scott's knowledge that OneCoin was a fraud scheme.

And there was a mountain of independent evidence at

trial, which was the evidence that the government relied on in its summation arguments to the jury showing that Scott was guilty, which supported, clearly supported Scott's conviction.

So just to speak briefly on those threshold issues we discussed in our brief. The first one is on this issue of timeliness. We just want to underscore, Scott knew, with the exception of a laptop, Scott knew about the false testimony at the time of the trial. He attended the meeting in question; so he knew the moment he received the 3500 material that Ignatov was incorrect in his assertion that Dilkinska was present at that meeting.

He also had a basis to file his motion regarding the erroneous preclusion of the exhibit that he claims was wrongfully excluded at the trial, the government exhibits, the e-mails from Dilkinska. And his delay in not filing those motions and not including arguments in his underlying motion originally, simply underscores the lack of merit and materiality on both of those issues.

The second threshold issue is regarding whether this evidence is newly discovered and whether Scott satisfies the first element of this test, which is the due diligence requirement. He's utterly failed to show, as required by that first element, that he exercised any diligence, yet alone due diligence, to find the evidence he now claims is newly discovered. That failure is fatal to his claim because it's

required under the case law.

Scott participated in the July 2016 meeting and he, therefore, had actual knowledge about the discrepancy between Ignatov's recollection of the meeting and the actual facts of the meeting, including the fact that Dilkinska was not there, a full month before trial. That was when the government turned over Ignatov's 3500 material that stated that Dilkinska was at that meeting with Ruja and Scott.

And to just underscore the deficiency in his claim that this was all newly discovered years after the trial, Scott actually cross-examined Ignatov on this very point at the trial, suggesting to the jury and Ignatov that Dilkinska was not even in Sofia, Bulgaria, at the time of the meeting. So that evidence is clearly not newly discovered evidence.

But even if we assume the evidence regarding the passport and the India travel records is newly discovered, it still completely fails on that threshold's first element regarding due diligence. As I mentioned, he was put on notice a full month before the trial about the statements about the July 2016 meeting. The notes clearly reflected that Ignatov had told the government that Dilkinska and Ruja were both present at that meeting with Scott, and because Scott attended the meeting, he knew immediately that that was inaccurate. That's the very same topic he now brings his perjury claim on.

Yet, he's offered no evidence in any of his

submissions, or here today, that he took any steps, after receiving the 3500 material a month before trial or during the trial, to identify the evidence he now claims is newly discovered.

He's also offered no evidence that he reviewed materials that he had in his possession a month before the trial, which would have contained evidence showing that Dilkinska was in India at the time of the meeting. Again, that's precisely the type of evidence he's now claiming was newly discovered.

And just to put aside the concept of due diligence, which is the legal requirement here, he's failed to show he exercised any diligence in attempting to locate this evidence. The burden in this motion is on Scott. It's his motion, and he's failed to show he took any steps in the whole month before the trial, or during the three-week trial, to locate any of this evidence.

He also has misstated the factual record on this issue. He says in his brief that it was the government that originally found Dilkinska's passport records, and he uses that as an argument to demonstrate that it was impossible for him, the defendant, not the government, to identify records of this type at any point in time.

It was actually Scott that found the passport records originally and shared them with the government. This

completely undercuts this unsubstantiated claim that the type of evidence that's in dispute here was categorically unattainable by him before or during the trial.

At bottom, he knew about the inaccurate testimony before the trial. He knew about the inaccurate statements to the government that were contained in the 3500 material. He took no steps to find the very evidence that he now claims was newly discovered, and that is inconsistent with what's required under the law.

If a defendant, like Scott, knows about inaccurate statements by a witness, the law requires that he take due diligence, he take reasonable steps to find evidence disproving those statements if he wants to later make a claim that the evidence is newly discovered. And that ensures both that the interests of justice are protected but also that the finality of judgments are protected, which are both inherent in the rule 33 analysis. To conclude that Scott here somehow satisfied the due diligence standard by doing absolutely nothing, would turn the law on its head.

Your Honor, the third issue is with respect to Scott's failure to show that Ignatov committed perjury. The law is clear. Testimony that results from confusion, mistake or faulty memory is not perjury. And as Scott conceded during his argument, the whole body of law that he is relying on is perjury law. It concerns situations where there is

intentional, false testimony, and the record does not support that conclusion here.

First, just to put Ignatov's testimony in context, it's important to look at what he actually testified to at the trial. We tried to quote the full transcript portions in our brief so that it was clear, and when you look at it, it's clear he was relying on a memory to which he was less than certain of at the time of his testimony.

Scott pressed him again and again and again: Are you a hundred percent certain? He was trying to catch him in a lie; so he asked that question: Are you a hundred percent certain? He repeatedly couched his answers saying he was pretty sure. He said he was almost sure. He said he thought he was pretty sure.

It was clear he was confident, but it was also clear that he was not unequivocal, the way Scott describes his testimony here today. This undercuts his claim of perjury. It shows that his testimony wasn't absolute but, rather, he was relying on a memory that he was less than certain of.

It also simply doesn't make sense that he would intentionally lie about something and say anything other than he was certain that that thing he was lying about had happened. I'd also just note that he was testifying about an event that had taken place several years before; so it would make sense that his memory would not have been perfect on that issue.

Secondly, Scott ignores completely the broader context of Ignatov's testimony, the unchallenged truthful version of his testimony, which shows again that he was not intentionally testifying falsely.

The undisputed accurate portion of Ignatov's testimony was just as damning for Mark Scott as the disputed inaccurate version. This isn't a situation where Ignatov testified about something that made Mark Scott so much more guilty than the truthful version of his testimony.

It's undisputed that Scott attended the meeting -- that's not disputed -- at the OneCoin office -- that's not in dispute -- with Ruja Ignatova, the leader of the OneCoin fraud scheme -- that is also not in dispute. The only portion of testimony in dispute is whether Dilkinska, who was not the leader of the fraud scheme, was present at that meeting.

Given that the truthful version of the story was that Scott met with the boss of the whole criminal operation, Ignatov had nothing to gain by falsely testifying and intentionally testifying that Dilkinska was also there.

That's all the more true given that no one told Ignatov what was discussed at the meeting. No one told him whether, at the meeting, someone said to Scott: OneCoin is a big fraud scheme. Nothing like that came out at the trial. He did not know what was discussed at the meeting and, therefore, his incentive to say Dilkinska was at the meeting was zero.

These are all threshold requirements that Scott has to overcome in order to prevail on this motion. He can't overcome any of them, but even if he could, his claim still fails on the merits. And there's been considerable discussion here today of which test the Court should apply and whether this is a situation where the government knew or should have known or did not know, and I'm going to go through that in some detail because I think it's particularly important to put it into the correct legal framework.

There's two potential materiality tests that can apply here. One is the situation where the government did not know about the perjury during the trial, and the second is the situation where the government knew or should have known.

The first test is the test that applies here because the government did not know, nor should it have known, that Ignatov perjured himself at this trial. And under that test, a new trial is only warranted if the testimony, the disputed testimony, was material and the Court is left with a firm belief that, but for the perjured testimony, the defendant would most likely not have been convicted.

So on the issue of whether the government knew or should have known, I'm going to walk through that part in some detail. First, as I just explained, there is no evidence that Ignatov intentionally testified falsely at the trial about this meeting with Dilkinska, and because of that, there's no reason

the government should have known that he was committing perjury.

The second, and most basic, reason is that at the time of the trial, the government did not know, nor should it have known, that Ignatov intentionally testified falsely. The only evidence -- and this is what Scott is relying on in full. You heard it here today. The only evidence the government was aware of, that even suggested Ignatov's testimony might not be accurate -- not that it was intentional false testimony, but that it might not be accurate -- were those two e-mails that he referenced here in argument today.

The e-mails did not, as he represented to the Court during argument, indicate that Dilkinska was, quote, traveling all week. They indicated that she was traveling. The first e-mail was sent on a Sunday, which preceded the meeting that took place later that week, on a Wednesday, and it indicated that she was going to be traveling that week. That's what the e-mail said.

The second e-mail, sent at 5:18 the day of the meeting, she wrote "I am traveling too." That was it. The e-mails gave no indication of where Dilkinska was traveling, whether it was to a neighboring city, whether it's to another country, for how long she was going to be gone, when she would return, or whether she intended to miss the meeting that she was scheduled to attend with Mark Scott. That is the extent of

what the government knew about during the trial.

And just to read the language that's in the e-mails, in one government exhibit -- defense exhibit, I apologize, Dilkinska wrote to Mark Scott: "Will ask my colleagues to send the original to you this week as I am traveling the whole week." And that was written on a -- that was on a Sunday. The meeting took place, again, on that Wednesday.

And in the second e-mail, she indicated that she was -- she said: "But I am traveling, too, and because of this there is the present delay of my request to you."

The entire argument advanced by Mark Scott is based on the *Wallach* case. That's the primary case. You heard it from Mr. Devlin-Brown, that's the primary case that they are relying on for the proposition that here, on these facts, on these limited e-mails that simply said that Dilkinska was traveling for the whole week, that the government should have known about the false testimony, based on *Wallach*.

This case is nothing like *Wallach*, nothing. The facts in *Wallach* were clear, unambiguous evidence that the government was aware of, at the time of the trial, showing that the government's cooperator's testimony was false, and also, that the cooperator had a clear motive to falsify that testimony.

The evidence available to the government during the trial in *Wallach* showed that the cooperator had lied when he said he had stopped gambling and that he had continued gambling

while cooperating with the government.

For example, the cooperator admitted that he had signed $65,000 in gambling credit lines. There were casino records showing that the cooperator had gambled. He had a known history of compulsive gambling. He had been inconsistent in his explanation of why he had gambling credit lines, and there were proffered statements from the casino manager indicating that he had gambled, all while he had been cooperating.

The witness also had a clear motive to lie. He was covering up additional bad conduct that he had engaged in and not disclosed while he was cooperating with the government. So there, yes, the court concluded that, on those facts, the government should have known about his false testimony saying that he had stopped gambling.

Here, at most, there were ambiguous e-mails from a third party that indicated that Dilkinska planned to travel or was traveling the week of the meeting for an unspecified period of time to an unspecified location.

Scott paints those e-mails as being black-and-white notice to the government that Ignatov's testimony was intentionally false testimony, but it's equally plausible, looking at those e-mails and looking at them with what was known at the time of the trial, which is very different than what's known now, that Irina Dilkinska traveled back to Sofia,

Bulgaria, and attended the meeting.

Furthermore, there was also the absence of a motive to lie, which existed in *Wallach*, where the cooperator was motivated to cover up the fact that he had been engaging in additional bad conduct while cooperating with the government that he had failed to disclose.

Simply put, this evidence, this record does not support the standard established in *Wallach* for when the government should have known about perjury, and that's exactly what that standard in *Wallach* represents.

There's an important additional point to clarify on the law here. We heard a lot today about this "virtually automatic" language that's contained in *Wallach*. The only situation where reversal of a trial is virtually automatic is where the government had actual knowledge, actual knowledge of a witness' false statement at the time of the trial and relied on it, nonetheless.

There's no facts in this record to indicate that the government had actual knowledge at the time of the trial that Ignatov had perjured himself about either of the claims that are now being advanced as perjury. Even in *Wallach*, on those very clear facts that I recited to the Court a moment ago, the Court's conclusion there is not that the government actually knew, it's that the government should have known about the perjury. Even in *Wallach*, where those facts clearly showed, in

a way that the facts here did not, that the testimony was false.

The bottom line here is because the government did not know, and should not have known, about any of the alleged perjury by Ignatov, the verdict can only be set aside if the Court is left with a firm belief that, but for the perjured testimony, the defendant most likely would not have been convicted. Scott comes nowhere near meeting that test here.

There's also a second test that applies if the government knew or should have known about the perjury, and even under that standard, Scott still cannot prevail, and he still cannot make a showing that the perjured testimony was material under that test.

Under that test, he'd have to show a reasonable likelihood -- and that's what's required, a reasonable likelihood -- that the false testimony -- and here, that's the testimony about the laptop and Dilkinska's presence at that July 2016 meeting -- could have affected the judgment of the jury.

The limited testimony that's in dispute here had nothing to do with what was at issue at the trial, Scott's knowledge of whether the money he was laundering was from unlawful activity. And to put it a different way, Ignatov's testimony about the laptop and about Dilkinska's presence at that meeting was not probative in any way on the key issue in

dispute at trial.

Your Honor, the key point here, and it's one that is fundamentally glossed over in all of the briefing from Scott, is that all of the independent evidence at this trial -- evidence that had nothing to do with Ignatov's testimony about the meeting or the laptop and had nothing to do actually with Ignatov's testimony at all during the trial -- proved that Scott knew that this money was from unlawful activity beyond a reasonable doubt.

And the Second Circuit has been very clear on this point, where, as here, there is independent support of the defendant's conviction, the subsequent discovery of perjury does not warrant a new trial.

I want to highlight some of that independent evidence here because it's so important in resolving this motion. Again, this is evidence that had nothing to do with Ignatov's testimony at the trial.

Just to look at the big picture, what we established at trial is that Scott, who had zero investment managing experience whatsoever -- he was a lawyer at the time -- took in nearly $400 million of Ruja's money, which he knew all came from OneCoin, and he sent it wherever she directed him to. And the evidence showed that the elaborate investment structure that Scott painstakingly set up, was a facade. He even admitted in one of the e-mails that it was all smoke and

mirrors for the setup.

The evidence showed, again, that Scott, who was a trained lawyer, was told in explicit detail why OneCoin was a fraud scheme, and then he proceeded to take in nearly $400 million of OneCoin funds, and along the way, lied to financial institutions all over the world, forged documents, back-dated paperwork, even lied to federal agents, all in an effort to hide any connection between those funds and the true source of the money, which was Ruja and OneCoin.

And all of that evidence pointed to one logical conclusion, he knew he was engaged in criminal conduct. He knew that the money he was dealing with came from unlawful activity.

Now, I just want to quickly go through some of the key evidence, independent evidence that established these points. The first is the most basic point, and this evidence has nothing do with Ignatov's testimony.

The investment funds, at their core, were fake. These were fake investment funds that Scott went through an excruciating level of time and resources to set up. He had no investment experience. Again, on its face, it made no sense that someone who had no track record for investing was able to convince another person to give them $400 million of their money.

The only explanation for someone being willing to hand

over 400 million -- nearly $400 million to someone with no investment experience and no team of trained investment advisers, who had a track record showing they could earn the person money, is that that person got their money from unlawful activity. That was readily apparent to Scott. He knew what his experience was, and he knew how much money he was getting.

The other point on that is, Ruja and Scott basically never discussed investments at all in their correspondence. What they discussed was how they could successfully transfer money from one place to the next, at Ruja's direction. And Scott summarized this in an e-mail. He said: I'm setting up the transfers as investments. That's what he said.

This had nothing to do with investing. It was a sophisticated vehicle to hide and disguise the true ownership and control of this money, and successfully transfer it wherever Ruja directed him.

There's other smaller examples. Scott makes it clear that they cannot name the investment fund entities with anything associated with OneCoin. In a different e-mail, he wrote that the possible link to OneCoin was going to kill that particular transaction for them. It's also notable that all of the money that was Ruja's and came from OneCoin, always came to Scott through intermediary shell companies that had nothing to do with OneCoin and had nothing to do with Ruja on their face.

Another key area of evidence showing at the trial that

Scott knew -- key evidence that was totally independent of Ignatov's testimony -- is the lengths to which Scott went to cover up the link between the money in his funds and OneCoin and Ruja. Again, when you go through this cover up and you put it in context of him being a trained lawyer, it's staggering.

He orchestrated fake letters of comfort on behalf of two lawyers. This was in a situation where Apex, the fund administrator for the funds, had basically figured out that there was some very suspicious activity going on with the funds, and they started asking Scott questions, hard questions.

So Scott, again, he orchestrated fake letters of comfort on behalf of two lawyers, drafted them for the lawyers, and told the lawyers to put them on their letterhead. And what those letters of comfort contained was, again, outright lies about the source of wealth for the money in the Fenero funds, lies that were clearly designed to hide the fact that the money was from OneCoin and that the money belonged to Ruja. That was the common theme among these lies.

He also orchestrated back-dated wire instructions. Again, this was during the same time period. He instructs other co-conspirators to sign a set of fake wire authorization letters to justify the transfer of tens of millions of Euros after the fact.

And what's remarkable here is he was so concerned that someone was going to discover that these were fake

authorization letters, he actually went through the trouble of instructing the co-conspirators to sign the letters with different pens, to print them out and scan them back one at a time, to use an electronic signature in certain instances, all so that the wire instruction letters looked real, so that they looked like they were actual wire instruction letters and so that nobody figured out that this was all just a big sham. It was a big charade to cover up where the money was coming from and who it actually belonged to.

Scott even forged agreements. He manually changed the terms of contracts. He went in and changed the amounts, for example, of certain agreements and made the amount owed under the agreements approximately 20 times higher. And the forgery was clearly designed, again, to provide some paper justification for the large volume of payments he was receiving because he had falsely represented that these were licensing technology to OneCoin, that's what these fees represented.

None of this worked. Apex saw straight through it and concluded that Scott had given them fraudulent documents that hid the relationship to OneCoin. So Scott took it a step further. Got on the phone with Apex, on a recorded call that came in at the trial, and he started making outlandish claims to Apex about where the money came from. He said things like, Dilkinska was inventing ways to materially access to potential buyers for direct sales companies. Total nonsense, made no

sense, was a clear outright lie, and it was actually, again, just another instance where he was trying to cover up the true source of wealth and the fact that the money came from OneCoin and was Ruja's money.

Most tellingly, at the end of all of this, when the gig was up and he got arrested, he still lied. He lied straight to the face of federal agents and said, unequivocally, that OneCoin and Ruja didn't have anything to do with Fenero or any other investment fund that he was involved with.

Again, this is all independent evidence that has nothing to do with Ignatov's testimony at the trial. I mentioned earlier Scott was -- this is another category of evidence that showed he knew. He was explicitly told this was a fraud scheme. He was sent an article that contained a link to an article by a CPA in the U.S. that explained, in a great level of detail actually, why OneCoin appeared to be a fraud scheme. It appeared to be a pyramid or a Ponzi scheme, and it listed a number of reasons that supported that conclusion, and one of them was totally obvious, the OneCoins were entirely unusable.

He was also told that OneCoin was under investigation by the City of London Police. Again, these are obvious indicators that Scott knew and understood that the money he was getting from OneCoin was from a fraud scheme.

His compensation also made that clear. Again, he was

paid more than $50 million. He had no investment track record. He had no investment experience, and someone paid him $50 million in a situation where he essentially earned them no money. Top portfolio managers and legitimate asset managers in the United States don't make that kind of money, but the idea that someone would give a rookie, who had no track record, nearly $400 million for them to invest, and then pay them $50 million when they didn't earn them any profit, made no sense on its face and was incredible evidence showing to the jury that the only explanation for this investment structure was that Scott was intentionally using it to move money from an unlawful scheme.

It also gave the jury powerful evidence of Scott's motive. He used that money that he got to buy multi-million dollar homes. He bought expensive Porsche cars. He bought a yacht. He bought other luxury items. Again, all of that evidence has nothing to do with Ignatov's testimony.

Your Honor referenced earlier in the argument one of the documentary pieces of evidence that came in at the trial, where Frank Schneider, in writing, in a very explicit message that required no interpretation from Ignatov on the stand, he warned Ignatov that Mark Scott was a potential confidential informant. And this message, it spoke for itself. It referred to Mark Scott by the name "Mark," by the initials MS. There was no ambiguity there, and again, it indicated he might be a

highly placed confidential informant.

Why did that matter? It mattered because if Scott had actually been on the outside of this conspiracy and didn't know what was going on, Frank Schneider would not have said there might be a problem with Mark Scott. It only made sense that there might be a problem with Mark Scott if he was privy to incriminating information. That's the only way that it makes sense that there might be a problem if it turns out he's a highly placed confidential informant.

And Dilkinska's response to that, which again was in writing that came in at the trial, was: Actually, that doesn't make sense because if Scott was an informant, I would already be in trouble. Again, that response only makes sense if Mark Scott knows about the incriminating information that would have eventually gotten Dilkinska into trouble.

Your Honor, the last point, just very, very quickly on this independent evidence that came in at the trial. Scott took considerable steps throughout the conspiracy to hide his criminal communications. He said he was unwilling to communicate through certain types of communication channels, referring to them as "unsafe."

And it's notable he was communicating with Ruja, the undisputed leader of the fraud scheme, through a special crypto -- so-called crypto cell phone from Dubai. Again, that evidence came in. It was in e-mails. It did not rely on

Ignatov in order for the jury to learn and understand about his use of these secret modes of communication.

Your Honor, all of this independent evidence, evidence that had nothing to do with Ignatov's testimony about the meeting or about the laptop, or really about any of his testimony, shows that Scott's claim fails on the merits. It fails because he cannot show that the false testimony affected the outcome of the trial under the governing case law.

Put simply, if the jury had learned about the truth about the laptop, if it had learned about the truth about the meeting, it would not have created a reasonable doubt that did not otherwise exist, in light of this mountain of independent evidence that we just went through.

And, your Honor, just to go back to the main case that Scott relies on, which is this *Wallach* case, the case there is completely incomparable to the case here, and the central difference is that in that case, the cooperator's testimony was critical to the government. He was the centerpiece of the government's case. He provided the direct link between the defendants and the illegal conduct, and that is not the case here.

Scott's testimony, as I just mentioned, was limited -- I apologize. Ignatov's testimony as to Scott was limited. He met him once, never even spoke to him on the phone, didn't know what other co-conspirators had discussed with him about the

criminal nature of OneCoin. On this single issue that was in dispute at this trial, Ignatov offered essentially nothing.

Your Honor, it's notable -- so that we're not saying this from a position of looking back in hindsight and trying to frame it differently now that we're looking backwards. It's notable that when you read the government's closing arguments in this case, the evidence that's relied on is the independent evidence, not testimony that was coming from Ignatov, and certainly not testimony that had anything to do with these issues that now are in dispute. The core of the government's case was the independent evidence.

That's completely fatal to his claim and it's, unfortunately, your Honor, it's really, it's glossed over in the papers. It's the core issue, but it's completely fatal to his claim.

Your Honor, the final argument concerns the 14th Amendment claim, which it's a separate claim Scott raises concerning alleged -- essentially alleged prosecutorial misconduct. His claim rests on a faulty premise, which we've discussed at length, which is that the government actually knew during the trial of Ignatov's false testimony and chose to not correct the record on that point.

There's two obvious reasons that this separate 14th Amendment claim fails here. The first, which we've discussed, your Honor, is that the government did not actually know of

Ignatov's false testimony at the time of the trial, which is what is required under the case law he cites in his brief.

He relies on the *Drake* case, which lists element No. 1 is that the prosecution actually knew of the false testimony. And again, here, the only evidence that cast any doubt on the accuracy of the testimony were the two e-mails we've discussed at length, that was it.

This is in total contrast to *Drake*, which he relies on. There, the prosecutor had actual knowledge the testimony was false because the witness there testified falsely that he had first learned about the facts of that case the night before his testimony, and it turns out the prosecutor had actually had an hour-long call with that witness two weeks before that testimony. So there was no dispute, the prosecutor actually knew during the trial that the testimony was false.

The circumstances here are totally incomparable. The only evidence, again, that Scott is relying on to suggest the government knew during the trial were those two e-mails, and that does not come close to the standard that is set forth in the *Drake* case that he relies on.

The second point, your Honor, is the one we've already addressed at great length here today, but part two of the *Drake* test is the materiality test, which mirrors the test in *Wallach* for situations where the government knew or should have known about the perjury.

And, your Honor, the test that's articulated in *Drake* is, one, the prosecution actually knew of the false testimony; and, two, there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.

Your Honor, the additional point that's been raised here today is whether a hearing is required, and there's two separate reasons why the hearing is not required here. The first is, as we noted earlier, there is a threshold issue concerning due diligence. And the record, as it stands here, is that Scott exercised no diligence in the month leading up to the trial, or during the trial, to find the evidence that he is now claiming could not have been discovered through the exercise of due diligence.

He knew about the inaccurate testimony a month before the trial. He knew during the trial. The record is clear on this point, and there's no additional need for a hearing in order for the Court to make that finding.

But more importantly, your Honor, even if the Court were to find in Scott's favor on all of the threshold arguments, or that the Court were to assume arguendo on all of the threshold arguments that this evidence is newly discovered, and that he has satisfied the due diligence prong, and that the government did know about the false testimony at the time of the trial, he's failed to demonstrate a reasonable likelihood that the false testimony could have affected the judgment of

the jury.

There is no hearing that is needed for the Court to make that finding. The trial record is complete, and it shows through independent evidence that Scott's claim fails on the merits. In this situation, your Honor, a hearing is, therefore, completely unnecessary.

And, your Honor, with respect to the first point that I raised, the record is clear on that point. There's no additional fact finding that's necessary, and for that reason, a hearing is not necessary here.

THE COURT: Okay.

MR. FOLLY: If we could just have one moment to confer before closing out our argument, and then we will get back to the Court.

THE COURT: Okay. One moment, and then one minute.

MR. FOLLY: Thank you.

(Pause)

Your Honor, there were a few additional issues that came up in the briefing, unless the Court has any specific questions about those issues, we will rest on what's contained in our brief.

THE COURT: Very well. Thank you, Mr. Folly.

Mr. Devlin-Brown or Ms. Stanley, I'll give you five minutes to respond, if you wish. Don't feel the need to take me up on it.

MR. DEVLIN-BROWN: Yes, thank you, your Honor, and I'll be as efficient about this as possible. I want to cover a couple of issues that the government just spoke to.

The first was the question of which *Wallach* test to apply, and the government said some, frankly, confusing things about that, but the Court can simply look to *Wallach*. It refers to the two discrete standards that apply, and where the prosecution knew or should have known -- that's in Wallach, should have known -- that the testimony was false at the time of trial, the conviction needs to be set aside, unless there's any reasonable likelihood that the false testimony could have affected the judgment of the jury.

That's the test, known or should have known. The government suggested that we sort of made up that the government admitted they should have known. They didn't. It's on page 38 of their surreply. They write, and it's a little mealy-mouthed, but it's an admission. At most, there is evidence that the government should have known, based on the Greenwood communications, which the government possessed but had not reviewed at the time of trial, that Ignatov had misremembered certain details about the July 20th meeting, and then his testimony about Dilkinska's being present was inaccurate. So they do acknowledge that and, in fact, it wasn't, as the government just said, based on Defense Exhibits 550 and 552. It was also based on these Greenwood e-mails.

The second thing that I want to address just briefly is the timeliness argument again, because one thing the government said was, you know, as soon as we have the 3500, we could have conducted some sort of investigation. The 3500, in the vaguest way possible, referenced Konstantin's testimony about this meeting, but it didn't give a date. It didn't say July 20, 2016.

The government marshaled various things at the time of trial that made it clear that Konstantin was committing to that date and, of course, the defense did take steps. We found Defense Exhibit 550 and 552. But there's' a whole bunch of other reasons why the timeliness argument that the government makes are relevant, and we will rest on our papers.

On the perjury issue, the government is just wrong here. I mean, they have a view that this was a mistake, not perjury. We have a view, which is at least equally plausible, I think much more than equally plausible, that Konstantin purposely embellished a detail the only meeting he had with Mr. Scott.

And the law is clear there, the *Spinelli* case cited in our brief, the Court needs to assume it's perjury because that is so material to which *Wallach* standard applies, or it needs to have a hearing, or the Second Circuit is going to assume it's perjury or send it back for a hearing. So it seems, I suggest the Court just look at the end of our brief. I think a

hearing is necessary, unless the Court is just going to assume, for purposes of argument, it's perjury.

And then the final point I want to address, and I'll address this briefly, your Honor, but the government spent a great deal of time talking about the supposedly overwhelming evidence. The first point I'll say, which is the most important, which is, if the rigorous *Wallach* test applies, which it does, then we're talking about any reasonable likelihood the false testimony could have affected the judgment of the jury.

And you have Konstantin Ignatov, the sole cooperating witness, lying about the meeting, the only meeting he had with Mr. Scott, where he did, contrary to the government's representation, report hearing details about the meeting from Irina Dilkinska, namely that it took Mr. Scott a very long time to understand what was being discussed.

And his credibility, if he's going to lie about the sole meeting he ever had with Mr. Scott, then he's going to lie about a number of other things, the jury would have readily concluded. And I just refer you to our papers in our original reply, your Honor.

Konstantin was crucial, not just to establishing -- not just saying Mr. Scott was a money launderer, using the exact term that was the subject of the conviction, but relaying all sorts of negative evidence of what people supposedly told

him. And he also served a very important point of which the government said at sidebar, and we note in our last brief, which is that without him, their case was a bunch of paper. He was the one that enabled them to put it together.

But to the substance, beyond Mr. Konstantin, of what the government's case was, I would just ask the Court to focus very specifically on the money laundering statute, which requires Mr. Scott to know that he was dealing with proceeds of a felony. And the government's only theory of that, was he knew OneCoin was a fraud.

The only direct evidence, other than Mr. Konstantin, they offer there, direct evidence -- and I know circumstantial evidence counts; I'll get to that in a moment. But looking at the direct evidence they meet with in every brief is a CPA blogger -- I guess his being a CPA is highly relevant -- sent Mr. Scott -- no, sorry, wrote an article that OneCoin was a scam, and that Irina Dilkinska forwarded to Mr. Scott in an e-mail saying its was defamatory and asking for Mr. Scott to help. No evidence that he ever read it. And that there was an investigation that he knew about at OneCoin.

You could say that about almost any cryptocurrency out there, that someone thinks it is a scam and has written about it, and there are investigations all over the place, some of which go somewhere, some of which don't.

When you put away that direct evidence, your Honor,

what you're left with is circumstantial evidence, and I want to give the government, for this purpose, all the benefit of the doubt, in the light absolutely the most favorable to them, they have a good case. Giving them all the credit, that Mr. Scott knew all the funds were associated with Ruja Ignatova, was going to send them where Ruja Ignatova wanted, but that is at least as consistent with the theory of innocence, which is money laundering in the sense that people use colloquially.

It could be just as plausible that he's helping Ms. Ignatova, a newly minted crypto millionaire, keep her funds out of her name, keep it in shell companies. People do it all sorts of times, all sorts of reasons, good, bad and gray.

And for the government's core theory of proving that he knew OneCoin itself was a fraud, there's very little, and when you take away Konstantin Ignatov, there's almost nothing.

But ultimately, your Honor, and I know I don't have time so I won't rebut each of the points they make. And I think we do it direct in our brief, such as the Frank Schneider exchange.

Ultimately, our argument isn't that the government shouldn't be able to present evidence to a jury of all of these things and argue whatever it wants. Our argument is the trial we had was fundamentally unfair because Konstantin Ignatov, the sole cooperating witness, perjured himself about the only meeting he had with Mr. Scott, as well as the laptop. The

government had knowledge at the time that the perjury was -- that this testimony was almost certainly false, from government -- Defense Exhibits 550 and 552.

They inexplicably reversed position as to an initial agreement that the government -- that the defense could offer 550, and they let testimony that they knew was almost certainly false go uncorrected, and that is unfair, your Honor. That's contrary to the fundamental duties of prosecutors to ensure that the jury bases its conviction only on true testimony.

So let the government put in all its evidence again, but let's do it in a trial where the perjuring cooperating witness is either not testifying, or is revealed to be the perjurer he is, and where the defense has the information disclosed properly by the prosecution that enabled that to be shown to the jury. Thank you.

THE COURT: Thank you, Mr. Devlin-Brown.

And thank you, all. I will take it under advisement.

Is someone ordering the transcript?

MR. FOLLY: Yes.

MR. DiMASE: Your Honor, just one other matter. This is not substantive. It's scheduling.

THE COURT: Okay.

MR. DiMASE: I believe right now the sentencing is sort of scheduled sine die, and so we don't have a particular date. I was wondering if the Court wanted to set an actual

sentencing date at this stage or leave it in that posture. I note it for the record.

THE COURT: Is the PSR complete?

MR. DiMASE: Yes, your Honor. It is.

THE COURT: Yes, we can.

MR. DiMASE: And the forfeiture briefing is, obviously, fully briefed at this point.

THE COURT: Right. Mr. Devlin-Brown?

MR. DEVLIN-BROWN: We think the Court should address these motions because if any of the motions are granted, frankly, there will either be no sentencing at all, there will be a new trial first, or there will be a different sort of sentencing, perhaps. So I think we should take things one step at a time.

THE COURT: So I will not show my hand. We won't set the sentencing for now.

MR. DEVLIN-BROWN: Thank you.

(Adjourned)